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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 18 February 1994 from the Permanent Representative of Sudan to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights

Upon the instructions of my Government, I have the honour to transmit herewith the enclosed document prepared by my Government in response to the report on human rights in the Sudan prepared by Mr. Gáspár Biró and contained in document E/CN.4/1994/48 of 1 February 1994.

I would appreciate it very much if the afore-mentioned document could be circulated as a document of the fiftieth session of the Commission on Human Rights under agenda item 12.

(Signed) Ali Ahmed Sahloul
Ambassador
Permanent Representative

Comments by the Government of the Sudan on the report of the Special Rapporteur, Mr. Gaspar Biro, contained in document (E/CN.4/1994/48 dated 1 february 1994

CONTENTS

	Paragraphs	Page
INTRODUCTION	1-5	3
A. Mandate of the Special Rapporteur...	6-19	4
B. Activities of the Special Rapporteur..	20-24	7
1. LEGAL FRAMEWORK.....	25-35	8
A. General obligations of the Government of the Sudan.....	25-26	8
B. The context of violations with special regard to violations of humanitarian law.....	27-35	9
II. REPORTED HUMAN RIGHTS VIOLATIONS.....	36-135	11
A. Violations by the Government of the Sudan.....	36-126	11
-Extrajudicial killings and summary executions.....	36-47	11
-Enforced or involuntary disappearances.....	48-50	15
-Torture and other cruel, inhuman or degrading treatment.....	51-65	15
-Arbitrary arrest and detention, and due process of law.....	66-71	18
-Provisions of the penal legislation inconsistent with international norms.....	72-73	21
-Slavery, servitude, slave trade, forced labour and similar instutions practices.....	74-78	21
-Freedom of conscience.....	79-89	24
-Freedom of expression, association and peaceful assembly.....	90-94	27
-The rights of the child.....	95-122	29
-Freedom of movement and residence, including the right to leave or return to the country and possesion		

Contents (continued)

	paragraphs	Page
of documents concerning personal indentity, with special regard to nationality.....	123-126	35
B. Abuses by other parties	127-135	36
III. CONCLUSIONS	136-140	40
IV. APPENDIX:		
Comments by the Government of the Sudan on the interim report on the situation of human rights in the Sudan prepared by Mr Gaspar Biro and contained in document (A/48/601) dated 18th November 1993		42

Comments by the Government of the Sudan on the report of the Special Rapporteur, Mr. Gaspar Biro, contained in document (E/CN.4/1994/48) dated 1 February 1994

INTRODUCTION

N.B. All Muslims are ordained by God to subject themselves to Sharia Laws and that matter could not be contested or challenged by any Special Rapporteur or other U.N. agencies or representatives:-

1. According to resolution 1993/60 of the Commission on Human Rights the Special Rapporteur for the Sudan, Mr. Gaspar Biro, (S.R.) was expected to submit to the fiftieth session a report on the situation of human rights in the Sudan to complete the Interim Report which he has already submitted to the 48th session of the General Assembly. To our dismay, the abovementioned report which has already been distributed but not yet discussed, proves that the S.R. has been working, not ultra vires his mandate by exceeding his limits here and there as is normally the case, but according to a totally different agenda which has no relation whatsoever with resolution 1993/60.

2. The main objective of that agenda is the abolition of Sharia Laws in the Sudan, and its tools are the collection of allegations of human rights' violations from whatever source. In lieu of "verification" of allegations the S.R. was engaged in "collection" of allegations, and instead of seeking information from "credible and reliable sources" as requested by resolution 1993/60, he has been seeking information from whatever available source, without even taking the trouble of commenting on the credibility and reliability of his sources.

3. Considering the damage done by the mere distribution of the report it will take far more than the good intentions of many members of the Commission to remedy that damage. At the outset, we would like to start these comments by expressing our clear and irriversible position that all references in the report, direct or indirect, to the abolition of Sharia legislations in the Sudan are unacceptable firstly, because they are against the ordain of God and secondly, because they are naked violations of religious freedom guaranteed by the main human rights conventions including Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights.

4. On the other hand, we request an immediate withdrawal of those references and we are of the opinion that the S.R. should be

brought to justice for his irresponsible remarks, regarding the source of Sharia laws contained in paragraph (61) of his report: "It does not matter in this context who the drafter is nor what the sources of inspiration of these norms are."

5. As for the rest of the report, our comments will follow the paragraphing of the report of the S.R. for easy reference, and they are as follows:-

A. Mandate of the Special Rapporteur

The attack on Sudan Government in the field of human rights started with the application of Sharia:-

6. When explaining, in paragraph (1) of the above-mentioned report (the report), that the situation of human rights in the Sudan was discussed for the first time by the Commission on Human Rights at its forty-seventh session in 1991, the S.R. did not tell us why had the discussion begun at that specific date, two years after the present Government has assumed power on 30 June 1989, despite the fact that the early months of assumption of power by any revolutionary government are usually tainted with violations of human rights, and despite the S.R. has decided in paragraph (8) of his report to concentrate on violations which have occurred after 30 June 1989.

7. However, if we relate the beginning of the discussion to the recommendation of the S.R. contained in paragraph 133 (a) of his report, whereby he called upon the Government of Sudan to abolish Sharia legislation, one would comfortably reach to the conclusion that the discussion has begun at the forty-seventh session in 1991 because that session was the first session to be convened after the application of Sharia in the Sudan in early 1991.

8. As for that unprecedented recommendation it has already been nipped in the bud in the above (N.B.) and it sufficies here to observe that one should not loose sight of the relationship between the application of Sharia and the beginning of the attack on the human rights' record of the Sudan. That relationship explains why the S.R. has tailored his report in such a manner as would make his call for the abolition of Sharia legislations appear as a normal conclusion. Actually that relationship is the backbone of the report and shows how the noble issue of human rights has been manipulated to wage war against Islam. What we are really confronted with is not an ordinary human rights report reflecting the legitimate concern of the international community but a flagrant attack on Islam which goes far beyond Sudan in violation of the principles of religious freedom guaranteed by the covenants referred to above.

The decisions of the Commission on Human Rights against Sudan in 1992 and 1993 are contradictory to the recommendations of the

competent working groups:-

9. In the same paragraph (1) of his report the S.R. has also declined to explain that the western countries have, in drafting the decisions adopted by the Commission against Sudan in 1992 and 1993, disregarded the recommendations of the competent Working Groups. Such an abnormal practice which is repeated in two consecutive years with regard to one single country (Sudan), out of the many countries included in the recommendations, could not have gone unnoticed by the S.R. who is supposed to be an expert in the field of human rights. But it seems that the authors of those decisions and the S.R. are working through consistent manipulation of the system towards the same objective, that is to say waging war against the Sudan not because of its violations of human rights but because of its application of Sharia. As such it would not be a fitting tribute for the S.R. to point out to the mishaps of his partners, the authors of those decisions. Undoubtedly we are going to witness, during this session, how are the authors will return that favor by welcoming his report which calls for the abolition of Sharia legislations in the Sudan being their ultimate objective.

The S.R. should have been an individual of recognized international standing and expertise in human rights:-

10. In paragraphs (4-6) of his report, the S.R. has referred to his appointment without making any reference to the qualifications of the S.R. provided for in paragraph (3) of resolution 1993/60. According to that provision the S.R. should have been "an individual of recognized international standing and expertise in human rights".

11. Such an omission on the part of the S.R. is understandable since it is obvious that he could not claim to have met those high qualifications in view of his age (born on 16 June 1958) and poor c.v., compared to the other expertise of the Commission who have been on the job before he was born.

12. Judging from our experience with the S.R., we have already proved his lack of experience and professionalism in paragraph (14) of our comments on his interim report (A/C.3/48/17) dated 23 November 1993 by explaining for example how he failed to distinguish between "allegations" and "evidence", a distinction which is very pertinent to his mandate. Another example is his failure to set an objective criteria for judging the credibility and reliability of the information as expressly requested by paragraph (5) of resolution 1993/60 which will be dealt with in detail in paragraph (14) hereof.

13. The fact that the S.R. does not meet the qualifications provided for in paragraph (3) of resolution 1993/60 reflects on the whole of his report which is not more than a collection of allegations instead of being a careful study of those allegations in the light of the internationally recognized concepts of evidence including admissibility, weight, and coroboration of evidence. But

no where in the report do we find reference to those fundamental concepts. It is only fair that the Sudan should not be victimized by his lack of experience and his report should not be given any serious consideration.

The S.R. is obliged to seek and receive credible and reliable information:-

14. In explaining the different aspects of his mandate, the S.R. referred in paragraph (4) of his report to his obligation: "to seek and receive credible and reliable information from Governments, non-governmental organizations and any other parties who have knowledge of these matters." That obligation is the most important aspect of the mandate and was included in paragraph (5) of resolution 1993/60 but, due to lack of experience, the S.R. failed to ascertain the importance of that aspect and that brief reference was the only comment he bothered to make about that obligation.

15. Paragraph (5) of resolution 1993/60 has actually made a very clear distinction between two different concepts: the weight of evidence and the admissibility of evidence. That distinction is recognized by almost all legal systems and is very basic to the kind of reporting entrusted to the S.R. But as is clear from the report the S.R. has missed the point and it seems that he has never heard of that distinction, and that explains why the report was a real confusion depending almost in all instances on hearsay evidence which is not only without any evidential weight but also inadmissible in many jurisdictions.

16. Naturally, poor qualifications coupled with lack of experience and a misunderstanding of the central theme of the mandate, that is credibility, reliability and admissibility of evidence, would not produce a better report than the one we are having which is a mere collection of allegations and hearsay evidence.

The S.R. is reporting only about few of the abuses committed by parties other than the Government:-

17. Under the provisions of the Commission on Human Rights' resolution 1993/60 the mandate of the Special Rapporteur covers the human rights abuses committed by all parties involved in the armed conflict as rightly referred to in paragraph (7) of the report. But the S.R. has not respected that aspect of his mandate for the following reasons: First, the Interim Report concentrates exclusively on the allegations levelled against the Government because, as in the words of the S.R. in paragraph (9) of his Interim Report: "the circumstances of the September Mission were not appropriate for a thorough investigation of reports on violations of human rights by different SPLA factions in Southern Sudan, although several reliable reports and information were already gathered in this respect." Second, the whole period dedicated by the S.R. for abuses committed by parties other than the Government is 10-13 December 1993 including travelling days - see paragraph (13) of his report. Undoubtedly that short period is

not enough to carry that "thorough investigation" promised in paragraph (9) of his Interim Report taking into consideration the size of Southern Sudan and the circumstances of the conflict. We are sure that his own agenda would not have made any circumstances appropriate for him to investigate the abuses of the rebel factions.

18. The above explanations show beyond reasonable doubt that the S.R. has not been genuine in investigating abuses committed by parties other than the Government, and we believe that is why he has confined his reporting on those abuses to six paragraphs (114-119) while allocating 87 paragraphs (26-119) to alleged abuses of the Government.

19. Actually we have not been shocked by that unbalanced approach of the S.R. but by the remarks of the S.R. in paragraph (7) of his report where he has described that unbalanced approach as a "respect" to the terms of resolution 1993/60. To say the least, that reference is inaccurate and misleading because he has actually disregarded his mandate and singled out Sudan Government as a main target for his unfair play.

B. Activities of the Special Rapporteur

The S.R. was not serious about his visits to the Sudan and has dishonestly declined to report certain incidents:-

20. A careful reading of paragraphs (10-16) shows that the Sudan has been most willing to receive the S.R. after the return of the Minister of Justice, who is at the same time the Chairman of the High Council for Human Rights in the Sudan, from New York but due to the insistence of the S.R. to schedule his visit form 14 to 17 December 1993 (before the Christmas), Sudan has accepted to receive him during that period. However, instead of giving credit to the Sudan he preferred to express his gratitude to the various United Nations agencies and indirectly blaming the Sudan for the meetings which he has failed to convene, and for the cancellation of his visit to Kajo Kaji for which the Government has issued the security clearance on 18 December 1993. Not only that but he declined to explain that he has requested to visit Juba and Malakal during 16-17 December 1993, and that the Government has agreed to his request and made all the necessary arrangements for those visits. Nevertheless he decided to cancel them on the evening of 15 December 1993 preferring relaxation and engagement in indoor consultations with biased sources in Khartoum, to field visits most needed to verify the allegations. He has been really keen to go back to enjoy his Christmas rather than to take the trouble of a more than four hours flight to Juba and Malakal. Ironically, he was calling that "respect" to his mandate.

21. In addition to all that, the S.R. turned down an invitation extended by the Minister of Justice to attend a seminar on the rights of the child convened in Khartoum during 18-20 December 1993 under the auspices of the Sudanese National Council for Child

Welfare and the UNICEF. No better chance could have been available for him for a close scrunity of Sudan's advanced legislations in the field of the rights of the child, but we believe that he has intentionally refused to attend in order to deprive the Sudan Government of that opportunity to clear its record on that important issue. To our astonishment, he has also declined to report his refusal. But it seems he has done so intentionally so as to justify the crocodile tears he has shedded about child rights in paragraphs (86-108) of his report which will be commented upon at length at a later stage.

22. An even more worse incident is his refusal to attend the opening of a trial of some of the persons whom he has inquired about, which has taken place on 20 December 1993, preferring to report in paragraph (55) that he :"sincerely hopes that their trial, unlike those referred to above, will be in conformity with the international standards for a fair trial and that independent monitors will be allowed to attend the trial." What independent monitors was he talking about while he himself has chosen to miss that golden chance to judge for himself how fair are trials conducted in the Sudan. But once again we believe that he has preferred to deprive the Sudan Government of a first hand information to clear the unfounded allegations levelled against it under what is called "arbitrary trials". Undoubtedly, that is an invaluable piece of evidence proving that the S.R. was not at all serious about his mandate. On the other hand, his omission to report his refusal to accept both invitations to attend the seminar and the trial, raises a lot of doubts about his honesty and credibility.

23. Those incidents and events show that the S.R. was not serious about convening any meetings or visiting any places in the Sudan because it seems that he has already reached his conclusions long before he requested to visit the Sudan.

24. As a matter of fact, those incidents reaffirm the dishonesty of the S.R., not only in tilting the balance of his report to the benefit of SPLA, but also in the reporting of the facts of his visits to the Sudan. In this context the dishonesty of the S.R. has gone to the extent of contradicting paragraph (24) of his own Interim Report, where he has expressly reflected the cooperation of the Sudan Government, which is also reflected in resolution 48/147 dated 20 December 1993 adopted by the General Assembly.

1. LEGAL FRAMEWORK

A. General obligations of the Government of the Sudan

The obligations of Governments under international law are too obvious to be reported in detail:-

25. It seems that the S.R., haunted by his lack of experience and professionalism and feeling guilty about his dishonest reporting, is making utmost efforts to impress the distinguished members of

the Commission, especially those members with no legal background. That explains why he has devoted many paragraphs of his report (17-21) to elaborate on the obligations of the Government of the Sudan under international law, a matter which is too obvious to be referred to, let alone to be reported in detail. When courts of law in any jurisdiction are confronted with such obligations they simply take judicial notice of them without putting any burden of proof with regard to those obligations on either party.

26. However, the issue which should have been addressed by the S.R. in that connection is the contradiction between his politically motivated call for the abolition of Sharia Laws contained in paragraph (133) of his report and the freedom of religion guaranteed by the international conventions referred to in paragraphs (17-21) of his report.

B. The context of violations, with special regard to violations of humanitarian law

The violations reported are to be considered in the context of a 10-year civil war in the South:-

27. We agree fully with the abovementioned remark of the S.R. contained in paragraph (22) of his report, but as is expected the S.R. would not elaborate where elaboration is most needed. The facts of that civil war to which all the alleged violations are attributable and which the S.R. declined to elaborate upon are as follows:-

a) The latest round of that war has started in 1983 long before the present government in Sudan has assumed power, and also before the application of Sharia in Sudan whether by the Government of President Niemeri or the present government.

b) The present government is and has always been keen to reach a peaceful solution to the conflict, and has actually started its efforts in that direction soon after it has assumed power by convening the National Dialogue Conference during September-October 1989 and welcoming and attending all peace initiatives up to the current IGADD initiative chaired by H.E. President Moi of Kenya. On the er side the rebel factions have always been blocking those initiatives and engaging in deadly fightings among themselves for "personal and ethnic motives" as rightly observed by Mr. Pronk the Dutch Minister of Development and International Cooperation who visited Sudan in 1993 - see paragraph 15 (c) of our comments before the General Assembly (A/C.3/48/17) dated 23 November 1993. Moreover, the Government of the Sudan has adopted a conciliatory policy which no one would have dreamt of, including exempting Southern Sudan from Sharia Laws, sharing power and wealth, and implementing a federal system.

c) Efforts to facilitate dialogue among the parties to the

armed conflict, of which the Government of the Sudan has the biggest share, have been welcomed by resolution 48/147 adopted by the General Assembly on 20 December 1993.

28. Apart from civil war, the S.R. has referred in paragraph (22) of his report to the abolition of a curfew on Khartoum on October 1993, but as usual he would not let the Government of the Sudan enjoy that rare favourable comment, so he went on in that same paragraph to state that he "has no information about the situation in other locations in Northern Sudan". Who on earth would have that information if the S.R. himself who has visited the Sudan twice pretends not to have it? We really envy the S.R. for his unmatched ability to raise doubts whenever there is any positive aspect to credit the Government.

The respect of the Sudan Government to Humanitarian Law has been commended by U.N.:-

29. The efforts of the Sudan Government in the field of humanitarian assistance which resulted in a series of bilateral and multilateral agreements with international, regional and national agencies have made the General Assembly to adopt a resolution during its 48th session in recognition and appreciation of those efforts. Moreover, the reports of Mr. Vieri Traxler, the Representative of the Secretary-General, who has visited the Sudan twice during 1993 have explained and appreciated the extensive efforts of the Government of the Sudan in that connection. On the other hand, had it not been for the cooperation extended by the Government of the Sudan, the humanitarian work appreciated by resolution 48/147 of the General Assembly would not have been possible.

30. Not only did the S.R. turned a blind eye to all those tremendous efforts, but also he declined to report the interference of the rebel factions with the delivery of humanitarian relief, despite the magnitude of that interference which included the killings of relief workers, confiscation of relief shipments, and attack against land and water relief deliveries. Luckily, that intended omission on the part of the S.R. would not cancel the official U.N. reports evidencing those interferences by the rebel factions.

Wrong Reporting:-

31. The shortcomings of the S.R.'s reporting is not confined to dishonest omissions and malicious elaborations but include a straight forward wrong reporting which contradicts the documentary evidence he admitted to have received.

32. A case in point is the constitution of the Sudan referred to in paragraph (25) of his report. The Government of the Sudan has never, whether verbally or in writing, told the S.R. that it is working on a Constitution at the present time. On the contrary, we have made that issue crystal clear by giving him copies of all the

the constitutional instruments which are in force. During his first visit, we have given him a copy of volume one of the laws of the Sudan (6th edition) which contains the Constitutional Decrees from No. (1) to (5) plus No. (6) which is a miscellaneous amendments.

33. During his second visit, we gave him copies of the recent constitutional decrees from No. (7) to No. (9) plus another copy of volume one of the laws of the Sudan to make sure that he has a full set of all the constitutional instruments in force up to that time. Not only that, but we have been keen to evidence that by a covering letter which he has received personally in front of his aides.

34. In the light of those facts, we were really unable to understand the reference in paragraph (25) of his report that he "did not receive any text of a draft constitution, despite his request for such a text."

35. To give him the benefit of the doubt, such a misundrestanding could have been attributed to his inability to understand English language, but that explanation was unacceptable because he was accompanied by an able interpreter. So, one more question mark is added to his performance which is already full of many question marks.

11. REPORTED HUMAN RIGHTS VIOLATIONS

A. Violations by the Government of the Sudan

They are fair trials and not extrajudicial killings and summary executions:-

36. The S.R. has resorted, in paragraphs (26-27), to generalizations and prejudicial opinions in dealing with the issue of "Extrajudicial killings and summary executions". His remarks are blunt and unabashedly hostile.He seems to have shed, altogether, his previous disguise of neutrality, and he seems to be determined to condemn the government at all costs, without due regard to his credibility as a United Nations Official. Many of his remarks seem to be impetuous, and lack that sense of deliberation and grave concern which are often associated with the briefs, memoranda, or reports, of experienced lawyers and legal academicians.

37. He refers repeatedly in his report to the court martial of the army officers, who attempted a coup d'etat in April 1990, which threatened then to have been a bloody affair, had the coup been successful, judging from the captured documents. Military officers who attempted to overthrow the legitimate government by force (in 1990, and 1991) have been properly charged under the People's Armed Forces Act of 1986, the Rules of Procedure for that Act, and the Penal Code of 1983. The Army's legislation, like that of any other army in the world, provides for Court-

Martials and Field Court-Martials. The plotters face charges under section 47 of the People's Armed Forces Act, section 127 of the Code of Procedure, section 96 of the Penal Code. Charges under section 47 relates to mutiny which is punishable by death or by any other lesser punishment. The offense covers attempt, abetment, causing or conspiring with other individuals to facilitate any mutiny against the legitimate authority. The right to object to the Chairman or any member of the court is ensured under section 136 (a) of the Rules of Procedure. The right of the accused to be assisted in his defense during the trial by a legal adviser, or any other person of his choice, is guaranteed under section 141 (a) of the Rules of Procedure. Sentences are subject to appeal or review before higher judicial bodies which are entitled to cancel, amend, or confirm them.

38. The Act also provides for the inclusion of any person accused of committing any of the said crimes if the Commander-in-Chief, with the approval of the Attorney-General, so decides. This could include retired army officers or civilians.

39. The trial of the army officers frequently referred-to by the S.R. was carried out by a competent military tribunal in 1991 under the Armed Forces Act. The trial lasted for more than 3 months. The defendants were availed of all means for defending themselves. Some of them confessed to the crime. Twenty five of the 26 accused were convicted: two were sentenced to death, but the State immediately commuted their sentence to life imprisonment. Most of those imprisoned have since been pardoned and released in accordance with the amnesty declared by the Head of State. There are no (government-sponsored) summary executions in the Sudan. Any arrest, detention or penalty, even in areas of war zones in the south is subject to the Sudanese applicable laws, competent courts, and due process of the law.

40. According to contemporary international law, dealing with the issue of human rights in peace times is different from dealing with it at war times. The international community has acknowledged that reality and made provision for the matter in the four Conventions of Geneva in 1949 dealing with human rights at the times of war. The military in the Sudan in areas of armed conflict has sometimes been accused of arbitrarily killing non-combatant civilians. All such accusations were fully investigated. It is worth-mentioning that in November 1992 a commission was formed by order of the Head of State to investigate the incidents that took place in Juba town during July and August 1992. The Commission is headed by an experienced and senior Supreme Court Judge. Moreover, if procedure followed by military and other tribunals which tried the cases frequently referred to by some non-governmental organizations if these procedure were arbitrary then one would not expect sentences handed by such courts to be uniform. In fact these courts passed all types of sentences, and some of the accused were actually found not guilty.

41. Complex human rights problems occur in situations of internal armed conflict. We can not stress strong enough the fact that there is now full observance by the Sudan of its international human rights commitments. There is no truth to allegations of indiscriminate violence by Sudanese armed forces against civilian population in the war zone in the south and in some other parts of the country. Such practices are actually most identified with insurgents in the south or armed robbers who turned some parts of Western Sudan into a lawless no-man's land. They robbed and killed hundreds of innocent women, children and old civilians. Reports of summary and arbitrary execution of civilians by forces loyal to the rebel groups are now wide-spread. The so-called SPLA/M Nasir Group accused John Garang of summarily executing without due process several of his political rivals. Non-Governmental organizations monitoring the situation can be accused of bias or of fomenting "terrorism". The "impartiality" of their reporting is to be assessed from the attention they are giving to violations by the government while ignoring opposition abuses. Amnesty International, for example, uses the neutral term "armed opposition groups". This might confer legitimacy on a movement that is carrying arms against the legitimate government.

42. The Sudan Government is fully aware of the clandestine meeting the Special Rapporteur, had with two relatives of the officers concerned, and which was arranged by a Western Diplomat, and the boastful remarks made later on by the relatives concerned, that they have succeeded in turning the Special Rapporteur against the government. In other words, if the Special Rapporteur, has substituted his role as a dignified representative of the United Nations by that of a detective under cover, and naturally he has to bear the responsibility of his erroneous conclusions, and its negative implication on his credibility.

43. Moreover, his classification in paragraph (28) of the shooting of Abu Bakr Mahy Al-Din Rasikh, as extra-judicial execution, because of his alleged criticism of the Government, is going beyond the limits of reason and rationality, and show a lack of judgement unworthy of the gravity of his responsibility. A simple case of manslaughter or murder, which is a matter for police investigation and eventually judicial handling, is in the view of the S.R. a case worthy of United Nations investigation and a means of condemning the Government. Such an attitude makes a mockery of all that the Commission on Human Rights is trying to achieve. What is really astonishing is the fact that the S.R. did not ask for information about that case but preferred to report the allegations as received by him. Actually in that particular case the legal immunity of the security officer has been lifted immediately and the case was transferred to the Ministry of Justice which is now taking legal action against the security officer.

44. Cases of treason resulting in hundreds of civilian and

military casualties in the town of Juba, and their handling by Court Martial, seem to continue to attract hostile comments from the S.R. in paragraphs (30-33), in his pursuit of his hostile campaign against the government. Since among the persons involved in this case, were two local employees of the U.S. Embassy, and the European Community, the Government has decided, out of courtesy to the two diplomatic missions, to set up a Special Commission, headed by a High Court Judge, to investigate the circumstances of the case, and report its conclusions to the Head of the State. However, the Commission has been inundated since its inception, by hundred of enquiries, many of them from the S.R., which caused it to delay the finalization of its Report. The S.R. had a meeting with the Chairman of this Commission, during his recent visit to the country (paragraph 14 of the Report), yet he failed to reflect what transpired in this meeting, in his report (paragraph 30). In that meeting the Chairman told the S.R. that he has addressed the Centre for Human Rights officially to tell him whether the centre still has new lists of names because the Commission has been stopped from finalizing its report because of the continuous flow of lists, but the centre did not respond. The S.R. is supposed to solve that issue by contacting the centre but it seems he will not do so because he wants the issue to remain open to justify the continuation of his mandate. On the other hand it is worth mentioning in this respect that the Government has established the Commission on 25th November 1992 before such establishment was requested by the General Assembly on 18 December 1992.

45. His reference to reprisals against the population of Juba in paragraph (33) does not conform with the facts of the situation. There were two consecutive attacks on Juba by rebel forces, with a short interval. The attacks and the shelling of the town by rocket batteries inflicted heavy casualties on the population and the garrison, and the consequent withdrawal by the rebel forces, with the government forces in hot pursuit led to heavier casualties among the rebels. The S.R. ignored to refer to the intense combat which took place within and around the town, and chose to portray the conflict as reprisals undertaken by government troops in cold blood.

46. The conclusions reached by the S.R. as to the executions and arbitrary killings of "thousands of civilians" without introducing any evidence or proof is in contravention of his training as a lawyer, and of the requirements of his profession let alone the requirements of his mandate. Such accusations cannot be made lightly, either based on the evidence of an individual or a report, without first establishing the credibility of such evidence or reports, and ensuring that the source is not an involved party in the political and military conflict in the country. Especially disturbing, is his statement regarding the arbitrary killing of thousands of civilians, which is based on conjuncture rather than solid facts, and can fall in the category of "wild accusation" unbecoming of a trained lawyer and a U.N. official entrusted with a serious mission.

47. The same can be said about his reporting on aerial bombardment of rebel held areas, and the dropping of bombs on market places or "close to a Christian Mission and a relief centre". The selection of the alleged targets and the reference to a christian place of worship, is reminiscent of the propaganda reporting during the Second World War, designed to generate the maximum sympathy for the supposed victims. One wonders if the S.R. has been led to adopt this line of psychological warfare by some interested party, or is he deliberately pursuing a policy of vilification against the government. The areas referred to in the narrative are not densely occupied by physical structures and are not heavily populated and military targets are not difficult to identify and pinpoint. A trained observer can be relied upon to distinguish between the facts of the case, and the line which certain quarters wish to propagate, and in our view the S.R. has failed dismally in his mission to examine, establish the facts, and report honestly on his findings. His reference to the racial identity of the popular defense forces, can only serve the sinister objectives of those who are striving to project the ongoing conflict in Southern Sudan, as a racial war, and his attempts to cast doubt on the attack on the relief trains by Units of the SPLA is flying into the face of truth, as such attacks have often been reported in the international media and referred to in the reports of the relief agencies operating in the region.

<u>The record of the Government of the Sudan on enforced and involuntary disappearances is one of the best as evidenced by the report of the Working Group - document (E/CN.4/1994/26) dated 22 December 1993:-</u>

48. The S.R. often refers in his report, under this item, to "ghost houses" a pejorative expression often used by elements hostile to the Government. We believe that it is unbecoming of him to make use of such expressions and in U.N. documents, and can only be construed that the narrative appearing in his report lacks the element of objectivity. The Sudan Government has already responded to his query regarding the three northern politicians mentioned in paragraph (38) of the Report. These politicians were released from detention in July and August 1993. The S.R. regretted his inability to include this information in his report (note dated 24 January 1994) on account of the fact that the report was finalized prior to the receipt of the information. He, however, promised to include it in an addendum to his report. This promise was not fulfilled, and he merely mentioned in the Report that two of them have "reappeared" -meaning, no doubt from the "ghost houses" he referred to in his narrative. The Sudan Government finds this language both facetious and insulting, and on the whole, unacceptable.

49. In his reference to the Report of the Working Group on Enforced or Involuntary Disappearances, the S.R. failed to

mention that the Government has responded to the queries of the Group whenever the information was available- given the vast expanse of the country, and the poor communications with the outlying districts. As a matter of fact, two cases have been clarified, and at least one case could not be clarified because of the time factor prior to the adoption of the Report of the Working Group (para 459 of the Report E/CN.4/1994/26). This information was conveniently overlooked by the S.R.

50. The allegations mentioned in paragraph 40 are a repetition of those referred to in paragraph 33, and the fact that they are being repeated in different sections of the Report, is to give emphasis to them, in the absence of a positive proof to substantiate them, apart from the S.R's resort to expressions, such as, "it has been reported" or "it is feared".

The responses pertaining to torture and other cruel inhuman or degrading treatment submitted by the Government of the Sudan has been appreciated by the competent Rapporteur - document (E/CN.4/1994/31) dated 6 January 1994:-

51. The frequent references by the S.R. to the so-called "Ghost houses", and his allegation in paragraph (41) that he received floor plans, and that the information he received gives the exact location of one of them, could have been cleared, by requesting the authorities to visit that particular location. If the response of the authorities is positive, then he would either confirm the information he received, or else refute the allegation. In case of a negative response, then he would be fully justified to reflect it in his report, instead he chose to repeat the allegations without bothering to investigate them.

52. The methods of torture, he enumerates in paragraph (42), are listed against practically the majority of the members of the U.N., and whether they are applied in the Sudan or not, does not merit the concern of the S.R. It is sufficient that his sources have reported them to him, and whatever comes from these sources is incorporated in the Report as irrefutable information. The Sudan Government however takes exception to his reference in paragraph (42) of "sexual assault including rape" committed in his allegations by members of the security agencies. This method may be rampant in other countries which, by the way, seem not to be accountable for their deeds, for obvious political considerations, but it is abhorrent to the Sudanese code of conduct, and the fact that the S.R. chose to attribute it to the authorities in the Sudan, only shows how much he understands the country and its set of values.

53. The case in paragraph (44) of retired Brigadier Mohamed Ahmed Al-Rayah had often appeared in the report of the S.R., and his repeated complaints are taken as factual, without due consideration to the fact that the Chief Justice of Sudan, has appointed a district judge to look into the complaints, to enable the authorities to take legal action, should the need

arise. The S.R. did not mention that the prison sentence has further been reduced to two and half years.

54. The case in paragraph (45) of Dr. Ali Fadul is one of the cases which are being doggedly pursued by the S.R., in spite of the fact that his death while he was still in detention in April 1990 was due to natural causes. He succumbed to a severe attack of malaria. The authorities have supplied the S.R. with the details of the case, but he seems to be determined to exceed his mandate, by continuously challenging the information supplied by the Government. Surely, such an attitude, apart from being hostile and prejudiced, is beginning to give an impression that any attempt on the part of the Government, to co-operate with the S.R., is an exercise in futility. He often exhibits an attitude of impatience and arrogance in dealing with Government officials. His repeated reference to the President of the Republic's inability to receive him, is impertinent, and he is well advised to desist in future from any reference to this issue in his reports.

55. The cases in paragraph (49) of Ismail Sultan, Kordobeir Bashir and Ibrahim Bashir, who died in El Obeid prison of natural causes, and their death was certified by the prison doctor, who issued the death certificates, were again challenged by the S.R., who preferred to go along with allegations of his "informed sources". The credibility gap between the Government and the S.R. is getting wider, on account of his attitude.

56. The case in paragraph (50) of the relief supplies train between Babanusa and Wau, is yet, another example of the one-sidedness of the S.R. This train is usually guarded by government forces and popular defence forces -familiar with the terrain, and the population concentrations along the route. The train has often been ambushed by rebel elements, which resulted in casualties among government forces, and loss of relief supplies. These facts are not reflected in the Report, and the S.R. has the temerity to continuously point an accusing finger to the Government side.

57. His remarks about the women's prison in Omdurman, are, to say the least, lacking in truthfulness and courtesy. His description of the improvements which have been taking place since his last visit, as "slight" is clearly indicative of his reluctance to show appreciation to anything that may be considered as constructive or positive on the Government's side.

58. On the other hand the Sudan has incorporated in its penal code of 1991 some forms of punishments which have unfairly been described by the S.R. as harsh, cruel, degrading or inhumane and contrary to the Universal Declaration of Human Rights. "Hudud" which met the brunt of criticism, is a punishment ordained by the Holy Quran. The Sudan has introduced in its Criminal Code what is known in Islam as "Qisas" i.e. the law of retribution where the accused receives a punishment equal to the offence he

has committed. Whether these forms of punishments equal to the offence he committed. Whether these forms of punishments are harsh or not,muslims are obliged to apply them provided that all the elements of the offence are satisfied. Muslims have no choice but to apply them because they form an integral part of their religion. To deny them the right amounts to a clear violation of the right of belief and choice of religion as expressed in Article 18 of the Universal Declaration of Human Rights, and Article 18 of the International Covenant on Civil and Political Rights.

59. Moreover muslims believe that these laws are the best laws to be applied to prevent crime, punish criminals and create peace and stability in the country.

60. These punishments, or hududs, can only be avoided or commuted in circumstances prescribed by Sharia Law itself. Such mitigating or extenuating circumstances are quite numerous in each case of hudud.

61. Sudanese courts always resort to these mitigating circumstances and for this reason such punishments are rarely implemented. These punishments or prohibitions are actually designed to deter rather than to inflict the actual punishments. A number of years have elapsed since such punishment as amputation of hands, cross-limb amputation or crucifixion is imposed but without wide application. This is due to the difficulty or rather the impossibility of establishing an offence of "hudud" as the burden of proof is very onerous. On the other hand, all verdicts of death penalty, amputation and life imprisonment have to be submitted to the Supreme Court for confirmation (section 181 of Code of Criminal Procedure).

62. The Penal Code of 1991 specifies a few mitigating circumstances which enable the judge to avoid imposition of the death penalty. The law gives the deceased's relatives (blood relatives) the right to pardon the accused, and the law provides for payment of "dia" (blood money) as a monetary compensation to relatives of the deceased and as an alternative to death penalty. It also helps to reduce tension between the families of the deceased and the accused.

63. It is worth-mentioning that Southern Sudan is currently exempted from those sections of the 1991 Criminal Act.

64. So we believe that the call by the S.R. to abolish those provisions is blasphemous and offends the feeling of muslims world wide and should be withdrawn. We even call upon the Commission on Human Rights to bring the S.R. to justice.

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Arbitrary arrest, and Detention and Due Process of Law :-

66. The process of arrest, detention, and trial is not carried out arbitrarily but subject to the legal procedures provided for in criminal procedure and national security laws, and consequently any action exceeding these procedures is considered an offence. The S.R. must have been fully aware of these laws since he was given copies of them during his visit to the Sudan. In addition he has also received a full reply regarding all allegations of arbitrary arrest, detention and trials.

67. Inspite of the foregoing, the S.R. in paragraphs (52-58) reported generally about arbitrary arrest, detention and trial, but without referring to one single case. These mere allegations collected by the S.R. are in contradiction with his mandate which obliges him to seek credible and reliable information. We affirm in this connection that the Government respects the right of the individual not to be arrested, detained or tried arbitrarily, not only because it is a mandate of international law, but more importantly because it is an Islamic ordain and must be fully adhered to in all Muslim societies.

68. It is an established fact that the laws governing detention in the Sudan are in full compliance with the principles of International Law enshrined in Articles (5) and (9) of the Universal Declaration of Human Rights, which provide that no one shall be subjected to arbitrary detention or torture, and that those principles have been given the force of law. The Sudan National Security Act 1990, as amended in 1991 and 1992, has elaborated in that regard in a more detailed manner as follows:-

a) The National Security Council can only order detention for the protection of public security for a period not exceeding three months.

b) The detainee has the right to be informed of the reasons of his detention.

c) The detainee shall not be subjected to any physical harm or cruel treatment.

d) The detainee has also the right to complain to the competent Magistrate about non-compliance with the safeguards provided for in the law.

e) The National Security Council may make an order extending the detention for three months if it deems that the public security so requires, but such order for the extension of detention is subject to judicial review.

f) Any person released under judicial review shall not be re-detained except after the expiry of one month, or with the prior permission of the Magistrate concerned.

g) Any person acquitted by any court under the National Security Act shall not be detained for being suspected of having committed an offence against the security of the State except after the expiry of one month as of the date of acquittal or with the prior permission of the Magistrate.

h) Any person violating the aforementioned provisions shall be punished with imprisonment for a period which may extend to ten years.

69. In addition to the above tight legal regime which makes detention subject to strict judicial supervision, the Government of the Sudan has taken the following further measures:-

a) Provisions were introduced for the first time in the Sudan Penal Code 1991, incriminating all acts of torture or ill-treatment of detainees (Sections 89, 90 & 115).

b) A legal Counsel from the Attorney-General's Chambers was designated to make unscheduled visits to detention centres in order to ensure that detainees are treated according to law and to take legal proceedings against any law enforcement officer abusing his powers. Statistics show that during the period from November 1991 to November 1992, twelve criminal complaints were filed against twenty three security officers suspected of torture or ill-treatment of detainees.

c) The authorities concerned have started to organize seminars for the security officers where eminent lawyers and opinion leaders lecture them on relevant international conventions, religion teachings and national laws prohibiting torture and ill-treatment of detainees.

d) Many judicial and other investigation committees have been set up (such as Juba incidents, Kazan Jadeed ...etc.) to investigate all allegations concerning abuse of powers. Legal actions have and will be taken against any law enforcement officers found quilty of abuse of power.

70. Having said that much about the theoretical aspect of the legal regime governing detention in the Sudan, it remains to be said further that the objective verification of the allegations made against the Government of the Sudan shows beyond any reasonable doubt that most of those allegations are groundless as is clear from the following:-

a) The S.R. himself, he was then an Independent Expert (IE), mentioned in paragraph 27 of his report (E/CN.4/1993/R.4) submitted to the 49th session of the CHR

that the Sudan Government has introduced to him Mr. Louis Gore whom Amnesty International and other sources have alleged to be arbitrarily detained and tortured. In that paragraph the IE explained the facts of the allegations as follows:-
" Louis Gore was introduced to the IE personally. He told the IE he had been detained for three days and that he had not been tortured - his general physical condition and behavior at first glance appeared as normal." Most of the allegations made against the Sudan and reported to the S.R. were similar to the allegations made with regard to Louis Gore, but the authorities were not conveniently able to introduce the persons concerned to the S.R. because his visit to Sudan was very brief, given the enormity of the allegations and the size of the Sudan.

b)The IE has also visited one prison in the Sudan (Kober Prison) which he has described as follows:- " In Kober Prison there was a number of approx. 15 persons who had participated in the 1990 plot, whose sentence had been reduced as a result of successive amnesties...the condition of these persons, ..was very good, since their relatives supplied them regularly with food, books, newspaper, radio and one T.V. set. The IE is inclined to conclude that human rights are respected in the Kober Prison. This opinion is shared by independent sources also." It is hard to believe that a Government so keen to respect the human rights of persons participating in a plot against that Government, as testified to by the IE, would violate the human rights of other detainees committing less serious political offencesas reported in the allegations made against the Sudan in the report of the S.R.

c) We have past experience with unfair allegations levelled against the Sudan as those published by Amnesty International (AI) in its document (AI Index: AFR 54/33/92) dated 30 November 1992, where it was alleged that twenty persons were detained and that there is a serious concern that they are at risk of torture. At that time AI did not bother to contact the Government of the Sudan for clarifications before publishing those allegations. As a consequence, those allegations have entered into the report of the IE despite the fact that they are groundless since Seven of the persons alleged to have been detained have never been arrested, twelve were arrested for a very brief period of time and released after completion of the investigations and the last one was convicted by an ordinary criminal court for 4 years imprisonment for embezellment. The arrest has followed an armed attack against Malakal City in late October 1992 where many civilians have lost their lives as a result. The procedures taken were only normal in the circumstances and the persons concerned are available to testify the falsity of the allegations of torture. The S.R. is repeating again the same experience by reiterating

allegations which are either unfounded or have been clarified.

71. In conclusion, we believe that the noble issue of human rights and the procedures of CHR which is a very important institution, were and are being used and manipulated for political and ulterior purposes, and if we allow that trend to continue, it would certainly defeat any endeavour to protect or promote human rights.

Provisions of the penal legislation not inconsistent with international norms:-

72. In his report the S.R. mentioned that the criminal law applied in the Sudan contains two main components: one of them consists of Hudud offences and the other is Guisas offences. According to his view these two components contradict the provisions of the international conventions to which the Sudan is a party but he failed to mention the conventions to which the application of Hudud and Quisas is contradictory.

73. Our response to that remark is nothing more than what we have already stated and we again urge the Commission on Human Rights to ask the S.R. to withdraw his remarks calling for the abolition of Sharia legislation and bring him to justice for offending the feelings of all muslims world wide since his call is not warranted and contradicts the freedom of religion provided for in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Slavery, servitude, slave trade, forced labour, and similar institutions and practices:-

74. Under this part of the report, the S.R. is not sure of the conclusion he has reached in paragraph (65) of his report. In that paragraph, he stated: "the argument that these practices occur on a tribal basis does not change the fact that they seem to fall under Article (1) of the Slavery Convention (1926)...etc..." This uncertainty in the words of the S.R. is obviously attributable to the lack of comparison existing between the hearsay he narrated under this part of his report, as opposed to the strong, clear, and solid phrasing of the Sudanese Penal Code of 1991. In this Code the crimes of abduction (Art. 161), kidnapping (Art. 162), forced labour (Art. 163), unlawful confinement (Art.164) and unlawful detention (Art.165) are punishable with imprisonment for periods not exceeding 7 years, 10 years, one year, 3 months, and one year, respectively.

75. Not even a layman would attempt to interpret Article (1) of the Slavery Convention, and Articles (1) and (7) of the Supplementary Convention on the Abolition of Slavery, the way the Special Rapporteur did. Article (1) of the Slavery Convention defines slavery as: "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised .." The S.R., given the legal measures outlined above,

failed to establish, through the allegations and hearsay he has compiled in his report, that the said right of ownership has ever been exercised, with the knowledge of the authorities in the Sudan, over any individual in any part of the country. Article (1) of the Supplementary Convention deals with the complete abolition or abandonment of the institutions and/or practices of slavery such as: debt bondage, serfdom, or other institutional practices against women and children. Under the clear wording of the Sudanese Penal Code 1991, there is no way for the S.R. to suggest that tribal fights and their ensuing practices occurring on varicus parts of the Sudan, fall under the above conventions. Article (7) of the Supplementary Convention On the Abolition of Slavery, defines slavery as " a person of servile status" following the same definition adopted by the Slavery Convention 1926. Article (7), further defines slave trade "as acts involved in the capture, acquisition, or disposal of a person with intent to reduce him to slavery..." i.e. that the element of intention is decisive. In the Sudanese tribal fights, which normally result in captives and prisoners of war on both sides of the conflict, there is no such intention. As such, the attempts of the S.R. to interpret this Convention as applicable to the case of the Sudan is malicious. It is also rebuttable by the fact that Islam, being the religion of the majority of the Sudanese shunned and prohibited all forms and practices of slavery, for hundreds of years ago prior to the adoption of the Slavery Convention of 1926.

76. Under this section of his report the S.R. also intentionally implicated the para-military forces including the Popular Defense Forces and the so called Mujahidin in the slavery practices which he described. We are confident in this respect that the S.R. was misadvised and that the reports given to him in relation to these forces are absolutely inaccurate. However, regardless of whether the practices exist or not, the Government of the Sudan applies the full extent of the law should the relevant provision of the Sudanese Penal Code 1991 be violated. However, what is new in this regard is the involvement, by the S.R., of the paramilitary forces such as the Popular Defense forces. These forces carry on a noble mission of protecting the relief routes and fighting banditery and outlaws who regularly interfere with the relief operations. The wrongful projection by the S.R. of the role of the Popular Defense Force exposes the baised and politically motivated mission, and goals of the S.R. which aim at embarassing the pro-islamic Government of the Sudan.

77. The hatered, irrationality and ill-purposes of the S.R. led him to describe in his report, an official document of the United Nations to which Sudan is a member, the displaced camps at Al-Dhein, Khor Tagat, Gomelai, Jalabi, Kelekela, Muglad, and Shahafa as camps in which women and children are bought by people from Northern sudan, or even from abroad, in exchange for money or goods such as camels. Apart from the fact that this allegation is a distortion of the truth and a clear malice on the part of the S.R., it represent a direct insult to a member state of the Organization. The Government of the Sudan challenges the S.R. to prove this

allegation, or otherwise the Commission on Human Rights is duty bound to correct its practice of Rapporteurship and to appoint a Special Commission to investigate the attitude of the S.R. regarding this paticular allegation.

78. The Government of the Sudan totally rejects as baseless the report prepared by Dr. Gaspar Biro on the situation of human rights in the Sudan and requests the Commission to investigate the betrayal by the S.R. of his mandate.

Freedom of conscience:-

79. It is regrettable that the S.R. applies standards of judgement which, if the government was accused of applying, it would certainly be in gross violation of human rights. The sweeping and utterly unfounded remarks in paragraph (66) regarding a government policy "of cultural and linguistic assimilation of persons belonging to ethnic, religious and linguistic minorities", it not only implausible, but it contradicts some other malicious allegations which the S.R. himself makes. That shows his only interest is to report as many smears of the government as can be crammed in his report, even at the cost of consistency and making an utter fool of himself. Without evidence whatsoever he claims that the government uses economic inducements, including land distribution, relief food, employment and even violence to induce religious and racial assimilation.

80. Even if it was granted that the government was so stupid and irrational as to think that murdering people and throwing them out of their homes, or withholding relief from them, would make the government and the values it espouses attractive to these people, the economic realities would not make such a course practicable. Government employment, given the economic realities, is more a sacrifice than a reward in Sudan. And as the U.N. records would show, the control of relief supplies is mostly in the hands of NGO's, most of them christian and Western. If some people erroneously believed that changing your religion is the way to get relief, this is the legacy of Christian Missionary Societies which, during British rule in Sudan, monopolized education and services, and only offered them to those who accepted baptism. Many western church-affiliated NGO's try to repeat what their forerunners did, and use tactics such as disseminating lies about Muslims like the ones peddled by the S.R. so as to maintain their tenuous hold over the population. The government is trying hard to educate the people against succumbing to such ruses, but our efforts are not helped by some NGO's which have an interest in spreading these lies, islam has never needed such inducement of this kind to spread; quite the contrary. And the Islamic values which the government promotes already have the support of the majority of the population, and that is the very reason why the government is promoting them.

81. The S.R. maliciously implies that the scattering of families

in some displaced camps is deliberately engineered by the government in order to help assimilation. He also implies that the type of education provided for the displaced is exclusively provided by Islamic NGO's. In both cases he was trying to mislead, we regret to say, deliberately. Had he wanted to find out the truth, he would have found out that education for the displaced is provided by the state. In fact, the educational institutions provided by Muslims NGO's are private and very expensive. The displaced would not be able to gain access to these much sought after institutions. The state education, just like that in any other country, reflect the lowest common cultural denominator, with special allowances for religious and linguistic minorities. No one accuses the US or Britain (or Hungary for that matter) of bias against minorities because the medium of instruction in their schools is the language of the majority, or because they cater for the culture of the land in its education. That is what education is all about. Within its means, the government caters for the needs of the minorities. For example, teaching of Christianity in state schools in the North has been made available for the first time under this government to cater for the rising demand. In addition, there is a large number of very prestigious church-run schools in Khartoum and elsewhere. There is thus no truth whatsoever in the S.R.'s allegations in this regard.

82. The S.R.'s claim that the security authorities "confiscated" the religious centre around the Mahdi's tomb is singularly misinformed and reflects on the quality of his information and the utter lack of care which he displays in authenticating his allegations. The said centre has not been confiscated, because it is already state property. The administrative decision of handing control of it from the Department of Antiquities to the University of the Holy Quran was designed to enhance its value as a living religious and national symbol for all the Sudanese. The "reports" which the S.R. quotes, about the "confiscation" of other mosques run by Ansar al-Sunna or the Khatmiyya are, like most of his allegations, untrue. It is also untrue that members of any sect or religious community were harassed or targeted, since, on the contrary, the government encourages the free self-expression of all these groups.

83. The reports about the interrogation of church men by the security forces, like the interrogation of any other citizen, could not be judged as originating in religious bias. If so, all priests and nuns should have been targeted. However, the majority of men of religion enjoy good relations with the government, which subsidies all churches in the country.However,, if church-men try to force their sexual advances on 15 year old girls, and the said minor and her family lodge a legal complaint which is adjudicated by courts, the government would be in serious breach of every legal principle if it intervened to prevent the law from taking its course. This was not a case of the government against this or that bishop, but there is a third aggrieved party who have rights protected by the law. The S.R. and those hired him appear totally unconcerned about these rights. This, if anything, shows that the mission of the S.R.

was not about rights.

84. Religious activities in Sudan, especially evangelisation, are subject to laws which seek to preserve religious and social harmony in the country. Even the British authorities during the colonial period recognized this, Church leaders must respect the laws and regulations governing these activities anywhere, the law prescribes how such situations are to be dealt with. These laws apply to Muslims and Christians alike, and Christians could not claim special prerogatives to defy the law just because of the U.N. Secretary General or the S.R. are also of that faith. We would not accept foreign dictation in this area, as the government and the local authorities in each area are the best judges of what is in the best interest of religious harmony in that location.

85. Only a confirmed anti-Muslim fanatic like the S.R. would make such statement as this one: "Islamisation...among Ingessana tribesmen...reached alarming proportions". It may be the S.R.'s prerogative to express alarm that Islam is spreading. (He made no comment whatsoever about the reports of "alarming" number of conversions to Christianity in both government controlled areas or in the rebel held areas, or the proliferation of churches to the extent that Khartoum state has got 572 new churches by February 1993). However, he must get his facts right first. To start with, not all of the inhabitants of Damazin Province are Ingessana tribesmen and the majority of the population of the area (if we need to alarm the S.R. more) are already Muslim. The Popular Defence Forces are multi-religious.

86. The uniforms for schools are prescribed by regulations and reflect the already acceptable norms for the majority of the population. Private schools, the majority of which students are Muslims anyway, cannot be allowed to impose uniforms by their own regulations which do no respect these norms. In areas where no uniform is prescribed, such as in university, the government does not interfere, and if we need to alarm the rapporteur even further, we can inform him that the majority of the students there respect the Islamic norms out of their own free will. Since the majority of school population is Muslim, and since it is contrary to educational principles to discriminate between children, the only natural course is for all to follow the norms which are acceptable to the majority and are not in any way against the values of the minority. There is nothing in Christianity which says that it is against Christ's teachings to dress decently; quite the contrary. So we fail to see what the outcry is about. We also find it extremely offensive that audacity and arrogance of the S.R. and those behind him has reached a level that they think it is fit to tell us what our children should wear at school. Whatever next?

87. In line with his blatant bias, the S.R. dutifully logs allegations about alleged destruction of churches in the fighting.

However, no mention is made in his report of the fact that the SPLA, in all areas it captured always started by cutting the throats of the imam of the mosque and the muezzin. Most mosques in SPLA territory had been either destroyed or turned into ammunition stores or liquor houses. By contrast, there was never a desecration of places of worship by the government or those under its control. And they could not do that, even if only because nearly half of the government soldiers are Christians. Thus the S.R. is blind to lack of freedom of worship where it exists and sees persecution where non exists. One wonder why?

88. The term "jihad" which is Arabic for "just war", is part of the cultural and linguistic heritage of the Sudanese people, and we make no apologies for using the term in the context of the just war which the majority of the Sudanese are waging to safeguard the common interest of society. The context of southern Kordofan in particular is relevant, since the people there, of all ethnic groups, are defending themselves against a minority which as the S.R. reluctantly reports, had been wreaking havoc with the lives of the majority in order to achieve its political objectives. Surely, the struggle for self-defence against aggression in this context is the most just of just struggles, and the people there were right to describe it in the terms of the symbols they cherish.

89. The rule on apostasy is unanimously upheld by Muslims as part of their faith. The government, the rapporteur and any other earthy power is powerless to change it. The government's interpretation of it is the most liberal there is, on the spectrum of Muslim opinion. We are not here in the business of consulting the U.N. or anybody else about fundamental matters of faith. We only seek to bring a little enlightenment to those who may benefit by it.

Freedom of expression, association and peaceful assembly

90. It is symptomatic of the Special Rapporteur's utter lack of respect for his mandate of seeking "reliable information" that he consistently fails to find out what is actually happening in the areas where he is dishing out instant judgements. He is completely oblivious to the law passed last year which gave private companies the right to publish newspapers and other publications. He is also oblivious to the fact that, as of 28 January this year, the government has relinquished all control of the main daily papers and their publishing houses, allowing them to compete as private entities with other privately owned publications. Already at least one new private publishing house has emerged to compete with the privatized companies. All his statements about government monopoly of the media are therefore redundant and pointless. Even in the field of Radio and Television, the government's networks are poorly funded competitors to powerful international broadcasting agencies of both radio and television which are freely and widely received in Sudan. It is in fact the government which should complain about lack of access and inability to make its views and case heard, since powerful international media conglomerates, (and U.N. Special

Rapporteur) are constantly giving space and credence to reports of its opponent, while its voice goes unheard.

91. It is disingenuous of the S.R. to try to link media to how the criminal law is interpreted. The provisions against obscene publications in the criminal law are similar to the provisions in almost any other country, and it is absurd to say that the authorities are dictated to by the media. It is doubly absurd since he claims that the media are directed by these same authorities. The claim he makes about the confiscation of certain publications is typical of his rash and ill-considered judgement about matters he has no knowledge of. He could not possibly know what was contained in the publications concerned or whether it included inflammatory material that could seriously harm communal relations in the country or not. So how can one make judgement about matters he is completely ignorant about, unless prejudice and malice is the ruler of the day in such reportage?

92. In any country of the world, elections and the information of political associations is regulated by the law. As long as the regulations allow free expression and full participation of all citizens without discrimination, certain types of associations and organizations which have caused universally acknowledged harm could temporarily proscribed. It is only common sense to try to progress beyond situations that led to repeated stalemate and harmed the progress of the country, as well as feeding strife and disharmony. Not even the opposition is calling for a return to the discredited party system. The opposition's programme calls for a five-year interim period in which no parties would be allowed to take part in government. The present government is only implementing policies which have unanimous backing in principle, and its programme differs from that espoused by the opposition in that it has more popular support. In the end, the people will decide how they want to run their country by electing the representatives they trust. We are also not in the business of taking advice from unemployed lawyers about how to run our country.

93. The Special Rapporteur's ill-informed statements about the views of the students of the university of Khartoum are no better than his other unenlightened and grossly biased remarks. An election took place which was run by an independent committee and which was observed by representatives of all candidates. Only after the results were announced did the losing party allege irregularities. Their claims were investigated by another independent judicial committee which declared them to be unfounded. That the S.R. should voice disquiet over the legal procedures taken against other and neglect the illegality of their acts which violated the rights of the majority only shows were his sympathies lie.

94. The S.R. produces no evidence to his claim that the majority of lawyers in Sudan boycotted the elections of the Bar Association or even had any misgivings about the way in which their Association is being regulated. The regulations in question were proposed by

the lawyers themselves and were promulgated in full consolations with them. The view of a hand full of former lawyers living abroad, some of them had not practiced in the country for more than two decades is hardly the baromater of lawyers opinions in the country.

The rights of the child :-

95. At the outset, we would like to submit that the S.R. is in no position at all to report about the rights of the child in the Sudan for the obvious reason that he (while in Khartoum) has turned down an official invitation to attend a seminar on the rights of the child held in Khartoum during 18-20 December 1993, under the auspices of the Sudanese National Council for Child Welfare and the UNICEF. He turned down the invitation as he decided to leave Khartoum on 17 December 1993 one day before the opening of the seminar, in order to meet his christmas plans.

96. Yet, this is another clear example where the Sudan opens the doors wide open for the S.R. to have first hand information about a very important issue (Children), in the presence of the competent U.N. agency (UNICEF), but he refuses to avail himself of that opportunity which would have precluded him from reporting at length, the unfounded allegations contained in paragraphs (86-168) of his report, starting with a very dramatic and sweeping introductory phrase: "The Special Rapporteur received numerous reports from all over the Sudan concerning violations of the rights of the child as laid down in the Convention on the Rights of the Child (1989)."

97. It is the attitude of the S.R. to use such sweeping remarks to distort the image of the Government, while his mandate obliges him to verify such reports before reiterating their contents.

98. As was the case with regard to the different aspects of the mandate, the Government of the Sudan has been keen to give the S.R. a true picture of the rights of the child in the Sudan, but as evidenced by that incident the S.R. has been turning a blind eye and a deaf ear. Nevertheless, the efforts of the Government have continued, and that is why the Government has decided, immediately after the conclusion of that seminar, to send to the S.R. by express courier the final report and the recommendations of the seminar at his home address where he was enjoying christmas holidays and using his imagination to report about the rights of the child in the Sudan. As expected he did not report that incident or even acknowledge receipt of the documents sent to him.

99. As for the substance of the issue of the rights of the child in the Sudan, our response is as follows:-

First: On the theoratical level:-

The representative of UNICEF in Khartoum, Mr. Tarig Farougi,

mentioned in his statement before the abovementioned seminar on 18 December 1993 the following:-

a) With regard to children in the Sudan we notice, during the four past years, that there are many clear milestones.

b) The Sudan is one of the promoters of the Convention on the Rights of the Child.

c) The Sudan is the second Arab Country to ratify that Convention.

d) The Sudan has ratified the Convention without any reservations. That was in full compliance with the recent call for minimization of reservations as reflected in the Vienna Declaration and Programme of Action.

In addition to the statement of the representative of UNICEF, and on the theoratical level we would like to make the following observations:-

a) Not only that the rights of the child are now part of the Laws of the Sudan, but actually the welfare of children has been made a constitutional obligation on the Government by Article (7) of the Constitutional Decree No. (7) promulgated on 16 October 1993. We believe that no country has gone that far, and such pioneership should have been commended by the S.R.

b) The seminar referred to above, took note with appreciation of the government initiative to review and revise all legislations pertaining to children, since the Minister of Justice has, by resolution No. (39) dated 22 May 1993, established a Committee for that purpose. The confusing references by the S.R. as regards Children Legislation in the Sudan, are actually dealing with a matter that was taken care of long ago by the Government, and that initiative was recognized and welcomed by a seminar held under the auspices of the UNICEF. Such important and relevant information should have been collected by the S.R., who visited the Sudan twice in less than four months while that information was readily available at the UNICEF office in Khartoum.

Second: On the practical level:-

The representative of the UNICEF in the seminar address also the practical aspects by stating the following:-

a) In 1992 the Sudan has launched a national plan for the protection and welfare of children and consequently become one of the only four African Countries who have done so.

b) There are many achievements which could be mentioned in this context, including the Wad Medani Workshop on the rights

of the child, the comprehensive vaccination, and the commencement and successful continuation of operation life line.

What else would a reasonable man require of the Sudan on the practical level, after having launched that national plan and achieved those objectives. Actually, there are many other achievements but we are keen to confine our references to those acknowledged by the representative of competent U.N. agency so as to show how biased was the reporting of the S.R.

Lastly, it is worth mentioning that the Government has made itself committed to the recommendations of that seminar.

A Children living in the street:-

100. From the international media coverage almost everyone is familiar with the multiple risks and dangers confronting street children including addiction, pornography, prostituition, and sale of organs.

101. The strategy of the Sudan Government in this connection has been to adopt effective, preventive, and curative measures so as to prevent and if need be eradicate those vices altogether. That strategy has and is working very well. The S.R. himself, with all his bias, has not reported the existence of any of those vices, but as is expected no recognition or appreciation was expressed by the S.R. for the efforts of the Government.

102. However, the S.R. did not rest contended with his omission to recognize the efforts of the Government, but has made utmost efforts to build a case against the Sudan by alleging that the Government is gathering the children in certain camps against their will, and that such action should only be done by an order of a Court of Law.

103. In fact that allegation does not hold water because it contradicts Article (3) of the Convention on the Rights of the Child which provides, inter alia: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be primary consideration."

104. It is clear from the foregoing Article that welfare actions concerning children do not in all cases require court orders. The public or private welfare institutions and the administrative authorities can take actions concerning children under only one condition, that such actions be in the best interest of the child.

105. The Government was actually doing nothing more than what is warranted by the abovementioned Article, and its national plan in that regard has been commended by the representative of UNICEF as making the Sudan one of the Leading four African countries with

such national plans. On the other hand, the street children are really competing for the welfare programmes of the Government which are confined to limited numbers because of budgetary constraints, so how can the S.R. dare to state that those children are detained against their will.

106. As explained in paragraph (88), the S.R., during his second visit to the Sudan, met privately with a child who has been retained for three years in those camps. It should be noticed that the child did not testify that he was detained, or kept against his will, or that he has been subjected to any religious or political indoctrination. Nevertheless, when the S.R. started raising queries about those camps during his second visit, he was invited for the second time to visit them, but surprisingly he refused to go. In his report he tried to make excuses for his refusal to visit those camps by saying the time was late in the evening, but he did not tell us why he did not request to visit them after he cancelled his trip to Juba and Malakal, since that cancellation gave him two more days in Khartoum. It seems, he preferred as usual, to get his information from indoor consultations with biased sources rather than to go and see for himself and collect first hand information. Accordingly the S.R. is in no position to report anything about those camps and his wrong reading to Article (3) of the Convention is unexecusable.

107. We conclude that issue with the following additional observations:-

a) The wrong translations of the titles of some legislations referred to in paragraph (88) is too insignificant to be reported or responded to.

b) In the same paragraph (88) the S.R. is placing his own shortcomings on the shoulders of the Government by blaming the Government for not making available copies of certain legislations, while the normal procedure provided for in resolution 1993/60 is that the S.R. is obliged to seek the information. So, a copy was not provided because he did not ask for one, as simple as that. The same argument applies to the information regarding the activities of the High Council referred to in the same paragraph, and the meeting with the representatives of the Ministry of Social Planning.

b) The S.R. has expressed his satisfaction with the living conditions of the children in those camps and evidenced the variety of subjects taught to them including mathematics - paragraph (92).

c) The Government has reported in detail about the camps to specialized agencies as referred to in paragraph (94) of his report, such reporting included document (CRC/C/3 Add.3) and (CRC/C/3/Add.20).

<u>B Abduction of children</u>:-

108. The issue of kidnapped children referred to in paragraph (95) is not true. It is either created by the S.R. or by the sources

who provided him with the information. But if he provided specific names of persons engaged in such illegal practices the Government would not have hesitated in taking immediate legal actions against the persons involved, especially that the crime of abduction is punishable under the Sudanese Penal code with imprisonment for a period not exceeding 10 years or with fine or with both penalties.

C The Status of Minors:-

109. With regard to the status of minors with special regard to penal responsibility, and death penalty referred to in paragraph (96), where the S.R. has agreed fully with the preliminary observations of CRC, we need only repeat here that, the Government of the Sudan has already established a Committee for that purpose and, that initiative has been commended expressly in the final report of the seminar already referred to above which the S.R. has declined to attend. Actually if he has attended that seminar, or at least looked into the final report of the seminar sent to him, he would not have written all those paragraphs about children in his report from paragraph (86) to paragraph (108).

D Sale or traffic of children:-

110. In paragraphs (97) and (98) the S.R. reported a very serious allegation concerning the abduction and sale of large numbers of children. But instead of providing credible and reliable information as required under his mandate, so that the Government can move immediately and take legal action against all persons involved in such notorious practices, the S.R. is using a very weak language:"--the mass abduction and traffic (including sale) seem to be an organized and politically motivated activity---which seem to be well founded". What else could he verify if he fails to substantive and prove such a purported mass abduction which could not be concealed if it really exists.

111. We are positive that those allegations have no factual base whatsoever, but the S.R. meant to report them only to distort the image of the Government. This ulterior intention has even made him to go back, in tracing those allegations, to the year 1986 as in paragraph (98), forgetting the time frame which he has drawn for his mandate in paragraph (8) of his report: "The Special Rapporteur has therefore decided to concentrate in the final report on violations which have occurred after 30 June 1989."

E The right of the child to identity and education:-

112. When making allegations concerning religious conversion and changing of names in paragraph (99), the S.R. did not even bother to mention the source of his information, let alone to comment on the credibility or reliability of the source. Accordingly we submit that those allegations are not true, and should not have been reported, because to report such a serious allegation without having any credible evidence would bear negatively on the

Government.

113. On the other hand, in the same paragraph the S.R. reported that he personally witnessed religious and political indoctrination of the children in the camps for displaced persons, but without telling us what does he mean by that. Therefore, there is no alternative but to challenge the S.R. to prove that what is taking place in any of those camps is a violation of the human rights of those children.

114. The imposition of Arabic as the only medium of education as referred to in paragraph (100) is not a violation of human rights, but is within the prerogative of any sovereign government, and such unwarranted interferences by the S.R., cannot be tolerated.

F Children in conflict zones:-

115. We fully support the statement contained in paragraph (101):"children have been used as soldiers in the conflict by all factions of the SPLA can also be confirmed by the Special Rapporteur." And we urge the S.R. to support the efforts of the Government in bringing those children back to their families and condemning the SPLA for such immoral and illegal practices.

G The rights of women:-

116. With regard to the rights of women referred to in paragraph (102), we again challenge the S.R. to mention the new laws and regulations "which caused concern both at the national and international level among activists and organizations dealing with the rights of women". Actually there are no such laws and regulations except in the imagination of the S.R., since women in the Sudan are enjoying equal rights with men, including the right to equal pay before that right was even recognized in many western countries.

117. As for the testimony of women in certain cases we would like the S.R. to know that is part of the ordain of God, and as such comes under freedom of religion guaranteed by the various human rights covenants and for those reasons combined we don't tolerate any comments regarding the issue.

118. It is good that the S.R. found himself obliged to report positively about the political rights enjoyed by women in the Sudan, in paragraph (104):"As far as the political rights of women are concerned, the S.R. notes that although the Sudan is not a party to the Convention on the Political Rights of Women (1952), the exclusion of women from political activities, including the right to elect and the right to be elected, to hold public office and to exercise public functions, was not reported." The Government of the Sudan has always been claiming that it respects human rights even if it is not obliged to do so by international law but nobody was listening until that claim is proved by the S.R. himself.

119. Despite all that, the S.R. reported in the same paragraph that abusive dismissal of women was reported to him, but since no names were given, the Government can take no remedial action and assures that no such actions are taking place.

120. With regard to the references in paragraphs (105) and (106) we would like to explain that the requirement of "muhram" is an ordain of God and our previous comments regarding ordains of God apply to it. As for the public appearances regulations, be it the dressing of women in public places or otherwise, they are only of persuasive nature, and the Popular Police Forces were not created purposely to implement them.

121. The question of the women prison referred to in paragraph (107) has struck the attention of the S.R. during his first visit and he has requested the authorities to improve the living conditions. The Government took immediate measures and allocated more than five million Sudanese pounds for that purpose, and during the second visit the S.R. has witnessed the progress of work and has commended those efforts. Now he is raising a new issue that those women were convicted for dealing in alcohol which for them are the only means of earning and that they are not able to pay the fines. We are happy to report to the S.R. that the Government is deeply concerned by that issue and measures have been taken to address it before he has become aware of it. Those measures included the release of 200 of these women before they have finished servicing their sentences, and the efforts exerted by the Ministry of Social Planning in working on a social solution to the problem.

122. We welcome the fair remarks contained in paragraph (108) regarding the legislative measures taken, and the national campaign launched by the Sudanese Women General Union against female circumcision and other harmful practices.

<u>Freedom of movement and residence, including the right to leave or return to the country and possession of documents concerning personal identity with special regard to nationality</u>:-

123. As is the case with other matters covered in his report, the S.R. tried as well as to give a wrong impression about the freedom of movement and residence including the right to leave or return to the Sudan and possession of documents concerning personal identity.

124. According to Constitutional Decree No. (7), everyone lawfully within the territory of the Sudan is entitled to the right to liberty of movement and freedom to choose his residence. There are no restrictions over such right, except those recognized in all jurisdictions and which are provided by law and are necessary to protect national security, public order, morals or the rights of freedom of others. The restrictions referred to by the S.R. in Southern Kordofan and the Southern States, are necessitated by the State of emergency existing in those areas, being combat zones and which was duly notified to the United Nations Secretary General as

depository.

125. References under this section of the report to house arrest of leading figures, are totally incorrect. It is also untrue that leaving the Sudan means difficult bureaucratic procedures or that approvals mainly depend on political reasons. Many opposing political leader left the country recently and continue to do so without being subjected to such procedures.

126. As to paragraph 113 of the S.R.'s report, the Sudanese Embassy in Cairo or in any places does not retain the passports of those suspected of being opposed to the Government. As stated by the Sudanese Ambassador in Cairo, those who have such complaints, could contact him directly regarding the same. It was obvious that the S.R. tried to make an issue out of nothing in paragraph 113 of his report, with respect to the freedom stated above.

B Abuses by other parties :-

127. Since the last round of the Civil War started in the South in 1983, there has been serious abuses of human rights committed by SPLA in the Southern Sudan. As regards the information received by the S.R. about the arbitrary detention of government soldiers and internal dissidents including torture in detention, but he has not verified this in his report being not even aware of the circumstances in which some of the soldiers were arrested and tried. The fact of the case is that in 1990 there was an attempted coup d'etat which was foiled by the Government troops. As a result of the failure a proper investigation was carried and those found innocent were set free while those found guilty were tried by Court Martial. It is common knowledge that whoever attempts to over throw any government and fail must bear the consequences in accordance with the laws of that nation. That is why in our view the S.R. has completely distorted the facts which otherwise and on closer examination are straight forward and clear.

128. We do agree that the split of SPLA into two factions and the ensuing fighting between them has wreaked a great havoc, as a result of indiscriminate attacks on civilians by both factions. After the government forces recaptured most of the towns which were occupied by the SPLA, the civilians came back to the towns for security, food, medicines, and clothes. The Government is taking care of these civilians, many families were reunited and the Government has welcomed the NGOs to assist in the process. Since the SPLA has abducted a large number of children, the Government has repeatedly urged the SPLA to return them back to their parents but the efforts of the Government were in vain.

129. It must be stressed, however, that the fighting between rebel factions has endangered and obstructed relief work, it has as well led to a regrettable incident in which three United Nations relief workers and one foreign journalist were killed near Nimule in

September 1992. The Sudan Government on its past condemned the incident. Unfortunately there was no retribution against the perpetrators of this crime and it seems that the S.R. choose to be oblivious to this incident.

130. Meanwhile, on the 5th December 1992 an agreement was reached in Nairobi to supply relief to the areas affected by famine in Southern Sudan but the SPLA violated it. Whereas in early 1993 there was a country agreement with the NGOs, and in the same year a Representative of the U.N. Secretary General visited the Sudan twice and expressed his appreciation for the arrangement provided by the Government, yet the SPLA blocked the execution of this agreement too.

131. The 48th session of the General Assembly endorsed the efforts made by the Sudan government in the deliveries of relief supplies and humanitarian assistance. Unfortunately, the SPLA has interfered with the flow of the supplies including the confiscation of some of the river delivery, an act which was condemned by U.N. Officials. At the present time they have refused to open the way to Kenya preventing relief supplies to the bordering areas..

132. It is really surprising that the rapporteur had made in that part of his report an allegation, without verifying the facts . That the government of the Sudan is killing civilians. The fact of the case is that those killings were the result of the fighting among SPLA factions representing Dinka and Nuers groups.

133. Allegations have also been made against the government for discrimination against certain sections of the population professing different views. In fact all citizens of the Sudan irrespective of their religious affiliations have been living in harmony, free from discrimination and religious intolerance, but this situation has changed drastically with the inception of the rebellion in 1983 as a result of which the population of the South has suffered severely. A case in point is the suffering to which the people of Equatoria has been subjected because they have tried to protect their families and property from the outrageous attacks of the rebel forces.

134. The report of the S.R. has not honestly reflected the magnitude of the violations of human rights committed by the Nasir faction. The whole population of Dinkas living in Konqor and Bor was raided, looted and eventually chased away from their homes. In the course of these raids more than 2,000 Dinkas were killed, not 118 as the S.R. has reported, so the Sudan is unnecessarily required to defend itself against those unfounded allegations, as the result of the attitude taken by the S.R. and his inclination to distort the facts.

135. It is clear that human rights including minority rights are, under international law, a matter of legitimate concern to the international community and their violations should be condemned.

We agree fully with paragraph (119) "that Garang faction raided villages of the Toposa tribe around Kapoeta in Eastern Equatoria allegedly taking revenge on the civilian population for the involvement of Toposa militia in the capture of Kapoeta by the Government" the raid was carried out by the Garang faction on account of the fact that the Toposa tribes have been opposing the SPLA and defending their own cattle and children from SPLA. the accusation against Toposa that they have supported the Government forces in the capture of Kapoeta town which led to the raid by Garang is not true because the Sudanese army was able to recapture all the towns occupied by the SPLA without assistance from any militia forces.

CONCLUSIONS

136. Considering the damage done by the report it will take far more than the good intentions of many of the distinguished members of the Commission to remedy that damage. The S.R. has kept vigil over the application of Sharia in the Sudan in particular, the penal legislations in complete disregard of the freedom of religion guaranteed by various human rights conventions. He was peculiarly haunted by that issue to the extent of using profane language and blasphemous composition and concluded by calling for its abolition., thereby hurting the feelings of muslims world wide.

137. He, uncompromisingly, complied the whole of his report to attain that objective turning a blind eye to the limits of his mandate and the requirements of credibility and reliability of information called for by resolution 1993/60. Moreover, he has turned down two official invitations extended to acquaint him with first hand information regarding two issues of his main concern, besides his unbalanced reporting regarding the atrocities committed by the rebel factions.

138. Before making definite submissions to this august body, we would like to corroborate our position on the shortcomings of the S.R. by citing quotations from the report prepared on 10 January 1994 by Mr. Jan Pronk, the Dutch Minister for Development Cooperation who visited the Sudan during the same year 1993 (and the report was submitted to the Speaker of the Deutch Parliament).

Those quotations cover different aspects of the situation of human rights in the Sudan and they are as follows:-

a)<u>The Government has enabled the Minister to get credible and reliable information</u> : "I accepted this invitation on the condition that I could go where I wanted and speak with whom I wanted....I visited the following villages selected by myself on the spot...we had the opportunity to select the discussion partners ourselves. A number of conversations took place without official presence."

b)There are adequate basic provisions: "The peace villages set up by the government authorities for fled Nuba people made an organized impression with, under the circumstances, adequate basic provisions. Apart from this, the villagers have been allocated pieces of land on which they can grow their own food."

c)Freedom of movement guaranteed: "In Kadugli, I also have talks with representatives of two Christian Churches. although there had been great problems in the past such as the restriction of movement and random arrests of priests the situation had improved....christians could now profess their faith without problems."

d)The security situation improved: "The people I spoke to said that the situation had been very bad a few years ago, when people were killed and...ganged, cattle was stolen and villages destroyed.Right now the security situation is improving and (every) one is gradually returning to the deserted villages."

e)The Government favours peaceful settlement to the conflict: "During talks with the government leaders it appeared that both the so-called hardliners as well as the more moderate are, even more than in April 1993, in favour of a quick ending to the war in the South by means of negotiations...The preparedness of the present Sudanese leaders to reach a lasting solution for the conflict in South Sudan by means of realistic negotiations seems to have increased."

139. The above cited quotations of such a reliable source as the Dutch Minister for Development Cooperation, which cover different aspects of the situation of human rights in the Sudan, supports our request to the Commission for the following:-

a. Withdrawal of and disregard of paragraphs 59,60,61 and 133(a) of the report regarding the abolition of Sharia legislation in the Sudan being contradictory to Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights.

b. Take the necessary remedial measures to comfort the feelings of muslims world wide for the blasphemous reference in paragraphs (61) of the report.

c. Not to consider the report as being a mere collection of allegations not supported by credible and reliable information as requested by paragraph (5) of resolution 1993/60 and at the same time contradictory to the report dated 10 January 1994 prepared by another reliable foreign dignitary who visited the Sudan during the same year 1993 (Mr. Jan Pronk, the Dutch Minister for Development Cooperation).

d. Take cognizance that the Government of the Sudan is in no position to cooperate with Mr. Gaspar Biro for the contempt he has shown for Islam and for lack of professionalism and lack

of impartibility as well as his hostile attitude.

e. Discontinue the consideration of the situation of human rights in the Sudan as the Sudan has complied fully with resolution 1993/60.

140. In conclusion, and in view of the unreserved cooperation by the Government of the Sudan with the Commission of Human Rights, and the fact that the Sudan has indicated its commitment to respect and observe its obligations under the various international human rights instruments, the Government of the Sudan is hopeful that this august body will favourably consider the above requests.

Appendix

A. Background

The Commission on Human Rights discussed the situation of human rights in the Sudan, for the first time, at its forty-seventh session in 1991, under the confidential procedures established by the Economic and Social Council in its resolution 1503 (XLVIII) of 27 May 1970. The discussion was instigated by some allegations levelled against the human rights record of the Government of the Sudan. During the course of the discussions the Government of the Sudan explained that those allegations were unfounded, biased and were actually designed to serve the ulterior objectives of the opponents of the Government of the country.

To allow for an objective verification of those allegations, the Commission on Human Rights adopted, at its forty-eighth session, a confidential decision requesting the Chairman of the Commission to appoint an independent expert for the purpose of establishing direct contacts with the Government and the people of the Sudan in order to report to the Commission on Human Rights at its forty-ninth session on the human rights situation in the Sudan. On 12 May 1992, the Chairman of the Commission on Human Rights appointed Mr. Gáspár Bíró as the independent expert for the Sudan.

The independent expert visited the Sudan and spent six working days from 21 to 26 November 1992 and has described the attitude of the Government of the Sudan towards his mission, in his report, as follows: "The independent expert must point out from the very beginning that both the Sudanese Mission and the Government of the Sudan have been very cooperative and that the schedule agreed upon with Ambassador Mohammed was fully accomplished".

Before the submission of the report of the independent expert to the forty-ninth session of the Commission on Human Rights, on 2 December 1992, the General Assembly of the United Nations was called upon to address the issue of the human rights situation in the Sudan at the insistence of some circles, which have sworn vengeance on the Government of the Sudan because of the objections of the latter to their dictates in its pursuance of the new international order, or disorder, whichever way its supporters or opponents choose to look at it.

As a result, the General Assembly adopted resolution 47/142 of 18 December 1992 on the situation in the Sudan expressing "its deep concern at the serious human rights violations in the Sudan" and calling upon the Government of the Sudan and the rebel bandits (Sudan People's Liberation Army (SPLA)) to take certain measures.

Despite the objections of the Government of the Sudan to that resolution, which has pre-empted the mission of the independent expert, nevertheless it has respected the will of the international community and has taken all necessary

measures to comply with that resolution. Those measures included the setting up of a judicial investigation committee and the enhancement of the delivery of humanitarian assistance in compliance with paragraphs 7 and 8 respectively.

The above-mentioned resolution of the General Assembly, coupled with the insistence of some circles in escalating their confrontation with the Government of the Sudan had a drastic impact on the Commission on Human Rights at its forty-ninth session in February 1993. That impact was exemplified by the Commission's neglect of the recommendation of its working group on country situations to extend the mandate of the independent expert as called for by his report: "... he could not dedicate enough time and effort to study the situation of churches and different ethnic and racial minorities and contact directly the individuals concerned". And so the Commission decided, by resolution 1993/60 of 10 March 1993, that the situation of human rights in the Sudan should be examined under public procedures and requested its Chairman to appoint a Special Rapporteur to investigate the situation and to report his findings to the General Assembly at its forty-eighth session and to the Commission on Human Rights at its fiftieth session. On 30 March 1993, the Chairman of the Commission on Human Rights appointed Mr. Gáspár Bíró himself as the Special Rapporteur. And at its substantive session of 28 June to 30 July 1993, the Economic and Social Council, by its decision 1993/272 of 28 July 1993, approved the Commission's resolution 1993/60.

The Special Rapporteur addressed a letter dated 29 July 1993 to the Government of the Sudan requesting an official visit to the country and he received a prompt official invitation in a letter dated 9 August 1993. Such a quick response shows the extent of the respect of the Government of the Sudan for the will of the international community and its readiness to cooperate. The Special Rapporteur visited the Sudan from 11 to 13 September 1993 and his interim incomplete report is now before the forty-eighth session of the General Assembly.

B. Comments on the interim report

1. The report is incomplete - betrayal of the mandate

Under the terms of resolution 1993/60 of the Commission on Human Rights, the mandate of the Special Rapporteur covers the human rights abuses committed by all the parties involved in the armed conflict in the country, as referred to in paragraph 7 of the interim report, yet the Special Rapporteur, for reasons not clarified in the report, chose to undertake two missions: one in September, in order to present an interim report to form the basis for the discussions in the Third Committee of the General Assembly of the United Nations, and another mission at the end of the year, in order to prepare a final report for the discussions of the Commission on Human Rights in February 1994. The interim report concentrates on the allegations levelled against the Government of the Sudan, in most cases by individuals, because, in the words of the Special Rapporteur in paragraph 9 of the interim report: "the circumstances of the September mission were not appropriate for a thorough investigation of reports on violations of human rights by different SPLA factions in southern Sudan, although several reliable reports and information were already gathered in this

respect". The question that comes readily to mind is: why has a more appropriate time not been chosen for the undertaking of the mission to provide the Special Rapporteur with enough time and means to cover the areas controlled by both sides to the conflict and thoroughly examine the mass of reports and information, already at the disposal of the Special Rapporteur, so as to present a more comprehensive and balanced report, otherwise any resolution which may be adopted will undoubtedly have a negative bearing on the discussions and the decision of the Commission on Human Rights in 1994, no matter what the final report will eventually contain or advocate. More ominous still is the contention of the Special Rapporteur that, although he will go on to address human rights abuses committed by parties other than the Government of the Sudan, it is however clear "that the Government of the Sudan, claiming sovereignty over the whole territory of the State, is bound to respect the human rights obligations and is to be held responsible should it not abide by these obligations". In other words, the concepts of fairness and objectivity may go overboard, or to take an example, the Government of Bosnia, for instance, should be held responsible for the crimes committed by the Serbs and Croats against the Muslim population of Bosnia. We are invited by the Special Rapporteur to be guided by this logic in our deliberations of this interim report.

We feel that by the admission of the Special Rapporteur himself, this report is not a complete one, and we therefore invite the members of this Committee, out of fairness and justice, not to adopt any resolution with regard to its content simply because it does not reflect a true picture of the complete situation of human rights in the Sudan. If any resolution is adopted at this stage, that resolution would be unfair and would reflect negatively on the proceedings before the Commission on Human Rights to be held in early 1994. What is fair is to take note of what is being presented at this stage by the Special Rapporteur and to ask the Commission to consider the report in its totality, thereby adopting a balanced resolution. Any other resolution condemning one party to the conflict would be unfair and unjust, especially if it is adopted at the level of the General Assembly, thereby making it binding on the Commission on Human Rights which is in no position to reverse resolutions adopted at the General Assembly. On the other hand, the General Assembly could adopt any resolution contrary to what the Commission may recommend. This was the situation Sudan faced at the forty-ninth session of the Commission in March 1993, which was influenced by resolution 47/142 of 18 December 1992, adopted by the General Assembly, which resulted in resolution 1993/60 of 10 March 1993, appointing the Special Rapporteur. We would hope that the Sudan would not find itself again entrapped by a premature resolution of the General Assembly. We appeal to your conscience, honourable members of this Committee, not to subject us again to this unnecessary dilemma of designed conspiracy whereby we would find ourselves accused, tried and convicted before the prosecution completes its case, let alone giving us the right to defend ourselves.

2. Full cooperation by the Government

In paragraph 24 of the interim report, the Special Rapporteur made the following remarks: "the Government of the Sudan cooperated with the Special Rapporteur by arranging the meetings he had requested ..." and "... the

Government of the Sudan further facilitated visits to the locations the Special Rapporteur wished to see. No objections were raised by the Government of the Sudan against a visit to SPLA-controlled areas in southern Sudan and the Nuba Mountains ...".

There is no doubt that the attitude reflected by the remarks quoted above is one of full and unreserved cooperation and assistance to the Special Rapporteur in the discharge of his duties, and that the Government of the Sudan ensured that the Special Rapporteur had free and unlimited access to any person in the Sudan whom he wished to see. The Special Rapporteur could have used the words of resolution 1993/60 to describe the cooperation of the Government of the Sudan which better suits the situation rather than the bare word "cooperated". It seems that the unreserved cooperation extended by the Government of the Sudan has disappointed the Special Rapporteur.

3. The Sudan People's Liberation Army is responsible for atrocities in the Nuba Mountains

The Special Rapporteur seems to have devoted a large section of his interim report (paras. 62-95) to an area known in the Sudan as the Nuba Mountains, which, though located in the geographical centre of the country, is in many respects inaccessible, and is more so during the rainy season. This area had been a confluence of communities with "distinctive ethnic, religious, cultural and linguistic features". However, and in spite of these distinctive features, social conflicts which took place on a tribal basis were the exception rather than the rule. The harmony which prevailed between the different communities was shattered during the 1980s before the present Government assumed power. The reversion to conflict on a wider scale was not due to the introduction and implementation of the Shariah law, as alleged by the Special Rapporteur, but rather to the rivalry between the political parties during the previous regime, abetted and financed by some neighbouring countries which vied for influence in Khartoum. That era gave rise to the armed militia, which paid lip service of allegiance to one party or the other, but soon enough took up looting and raiding, leading in the end to bloody clashes between various groups. The situation was fast plunging into another civil war, this time in the western part of the country. When the present Government took over, one of its top priorities was to put an end to this conflict, and it would largely have succeeded in doing so had it not been for the fact that the rebel movement (SPLA) had succeeded meanwhile in making a strong incursion into the region in 1993 "when more than 100 citizens were killed in an Arab Baggara inhabited village, Gardud, in the eastern part of the Nuba Mountains". This act of attacking and annihilating an Arab village was deliberately undertaken by SPLA to fan ethnic hatreds and atrocities. This is an aspect of the conflict in the region which, in our view, the Special Rapporteur failed to outline in its true perspective and thus helped to blur the role that SPLA played in the incitement of the wide-scale conflict and in the destruction of those parts of the region which had the misfortune to come under its control. His remarks that "hundreds of thousands of unarmed civilians are now completely exposed and defenceless to all kinds of atrocities committed on the one side by the Popular Defence Forces (PDF), the army and other Government of Sudan agencies, and on the other side by SPLA troops controlling a large part of the Nuba Mountains", and his frequent

references to a strong visible military and PDF presence in Government-controlled areas, could lead the unwary observer to conclude that:

(a) The heavy military presence in Government-controlled areas implies that the scale of atrocities and the infringement of human rights committed in these areas is proportionate to such a presence, and this tends to obscure those committed by the SPLA forces, although the latter are alleged to control larger areas;

(b) The frequent references to the PDF forces tends to obscure the fact that its members are recruited locally and drawn from all communities without discrimination, and are assigned to defend the hamlets and the local farms against raids by SPLA, which often does so to obtain food supplies and secure recruits for its dwindling forces. The Special Rapporteur, however, alleges to have gathered evidence, again without specifying its nature and reliability, of gross violations of human rights in the locations he visited which are under Government control, and goes on to contend that these cases must be considered as elements in a larger context. The report is deliberately vague on the responsibility for the instances of human rights violations and, while placing the blame on the Government and SPLA, does not specifically state the share of responsibility for which each party is to be held accountable. Hence, the impression that one gets from the report is that the Government is solely responsible.

The Special Rapporteur, in his tour of the Dilling-Kadugli area, has done his utmost to find evidence of abuses by the Government and PDF forces, by resorting to the following methods:

(a) Failing to elaborate on evidence of attacks and harassment of civilians by SPLA, and casting doubt on the authenticity and reliability of such organizations as the Peace and Resettlement Administration for Southern Kordofan, by referring to it in paragraph 72 as "the so-called 'Peace Group'", and on the information supplied by it regarding the destruction of the social and economic infrastructure in the region, owing to the attacks of SPLA;

(b) In his review of the evidence given by some individuals, including one or two tribal chiefs, the Special Rapporteur selected those parts of the evidence which are of doubtful value and tried to place the onus on the Government, basing his conclusions on "several reliable independent sources" which claimed that a specific tribe in this region is "targeted by the Government of Sudan forces because it is suspected of close collaboration with SPLA". Thus any information coming from the Government side is to be handled with scepticism, while evidence attributed to independent sources is referred to as "reliable" without indication by the Special Rapporteur as to how he had come to the conclusion that such evidence is reliable;

(c) The report often refers to some movements of population from outlying and insecure areas to some urban centres under government control, probably to seek security and food; it refers to the return of refugees to the peace villages set up by the Peace and Resettlement Administration and the figure of 167,265 is mentioned as the total population of these villages; it also refers to the claim by SPLA that there is an estimated population of 200,000 to 250,000

still living in the area of the Nuba Mountains under its control; yet the Special Rapporteur alleges that "if the present process of uprooting of the Nuba communities is not stopped soon, it may be irreversible". He describes the situation in the Nuba Mountains as "uprooting" without elaborating on his accusation. However, out of a population of 1 million inhabiting the region, nearly 400,000 continue to live in the peace villages and the area controlled by SPLA, apart from the population living in the urban centres such as Dilling and Kadugli and the displaced-persons camps around them, with the rest drifting further north to El Obeid, the capital of Kordofan State, and the federal capital, Khartoum. We understand the word "uprooting" to mean ethnic cleansing with the whole population being forcibly removed from their towns and villages, as is the case with the Muslims in Bosnia, but this situation does not apply to the Nuba Mountains except in the allegations of the opposition groups and the susceptible western media. We believe, therefore, that the conclusions drawn up by the Special Rapporteur in this respect are, to say the least, inconclusive and unfortunate.

In his meetings with four Nuba tribal chiefs, the Special Rapporteur was given a full account of the situation in their respective areas, and they seemed to point out the following facts:

(a) SPLA is "responsible for all atrocities committed and damages caused in the Kadugli area in recent years", and the chiefs went on to elaborate the atrocities committed and their locations, such as, "from 176 of their villages at least 73 were empty in September 1993, and some of the rest surrounded or besieged by SPLA troops".

(b) The chiefs mentioned in their testimonials "several cases of killing and torture of unarmed civilians, men, women and children, rapes, kidnapping and forced military training of children, burning down of houses and looting"; lists containing hundreds of names of victims were also provided. The chiefs' testimonials were classified by the Special Rapporteur as allegations, yet in the same breath he refers to a list of 400 names being supplied by what he calls "independent sources", an obvious reference in his classification to opponents of the Government. The frequent references to armed civilians bearing arms or "walking around without any apparent reason" within the context of his narration of attacks on villages, especially those around the front line, the disappearance of civilians from one or two villages in areas which have been changing hands, can only indicate that the Special Rapporteur had gone into the Nuba Mountains region with set opinions and preconceived conclusions. His allegation that he had "carefully studied the information he has assembled in the form of reports, documents, oral and written testimonies, photographs and videotapes", all this mass of information studied since the end of his visit to the Sudan on 23 September 1993, must have been quite an achievement. It is interesting to note that he refers to videotapes, among the materials he collected. The provision of such sophisticated material in a rural backward area raises a number of questions about the reliability of his sources of information. Although the Special Rapporteur notes, by the way, that "serious abuses have been committed by the two SPLA factions. As mentioned before, these abuses will be included in the next report", yet he goes on to "express his serious concern over violations for which the Government of the Sudan bears responsibility". The responsibility of SPLA and the atrocities committed by its

troops in the different theatres of conflict and the suffering of the civilian population caught in the midst of an internecine conflict are pushed to the periphery with the vague promise that it will be taken into consideration in the final report which is yet to be investigated and prepared. Meanwhile, the Committee is called upon to discuss the item before it and to adopt a draft resolution on the basis of an interim report that lacks both adequate information and the elements of impartiality and balance.

4. Chasing individual cases

The Special Rapporteur seems to be interested in chasing individual cases based on information whispered to him by his alleged "reliable sources", probably individuals opposing the Government. He made a trip from Khartoum to Sawakin, on the Red Sea, to check on a Sudanese citizen (para. 47) who was sent to prison after being sentenced by a court of law on the charge of conspiracy against the Government, a trip that cost time and expense, carried out to satisfy the urge of the Special Rapporteur to pursue allegations by elements hostile to the Government, to condemn it at all costs. And at the end of his report on that case he did not tell us why he did not ask to go to Kassala Prison to see that person. However we would like to assure the Special Rapporteur that the allegations made by that person, namely retired Colonel Mohamed Ahmed Elrayah, though dating back to 1991, are under judicial investigation and if established, whoever is responsible will face trial. The case of Kamal Mekki Medani and other individuals, who were convicted for drinking alcohol in a fair trial and who were defended by more than 20 lawyers at Wad Medani and which resulted in the acquittal of 10 of the accused and the suspension of the sentences of the others pending appeal, were described as an unfair trial, simply because three of the accused were brothers of a "reliable source" of the Special Rapporteur.

5. Displaced persons and refugees

In reviewing the problem of displacement and refugees, the Special Rapporteur fails to distinguish between displacement and the normal migration of population from rural and pastoral regions to urban areas, thus lumping together displacement and migration and coming up with the figure of 5 million persons (or one fifth the population of the whole country). The government departments concerned would have given to the Special Rapporteur a more realistic picture had he chosen to clarify the matter with them. As for the problem of those who sought refuge in neighbouring countries, the Special Rapporteur quotes two contradictory figures of 263,000 Sudanese refugees according to the World Refugee Survey 1993, and 500,000 according to the Representative of the Secretary-General on internally displaced persons. He does not explain why there are two sets of figures and why he still considers such information reliable and worthy of quoting in his interim report. As expected, he declined to report about the tremendous efforts of the Government of the Sudan in hosting masses of refugees of different religious and ethnic origins, an effort applauded by the United Nations specialized agencies.

6. Unfounded allegations

The respective government departments have been inundated by letters and memoranda from politically motivated individuals and groups inquiring about persons who are alleged to have been arrested, to have disappeared, to have been summarily executed, etc. Upon investigation it has been established that some of them are under investigation for normal infringements of criminal laws and would eventually go before the courts or be released; some are free, some have never been under detention, some names are merely fictitious and some have already been sentenced by courts for crimes committed and for which they were convicted. Those details are expected to reach the Special Rapporteur at any time because they have already been mailed. The Sudan is a very vast country and the means of communications are poor. That is why a response was not possible before he left Khartoum. The delay was not because those allegations are true as may be understood from the references of the Special Rapporteur.

7. Juba incidents

The Special Rapporteur seems to concentrate his allegations on the events which took place during the SPLA attack on Juba in June and July 1992. This attack followed infiltration by SPLA elements in civilian clothes. The infiltrators, using the element of surprise, succeeded in killing a large number of government troops and innocent civilians. Eventually, the garrison regained the initiative and managed, after heavy fighting, to drive out the infiltrators. The heavy fighting and the bombardment of the city by SPLA before the attack resulted in a lot of civilian casualties. The way the Special Rapporteur refers to these regrettable events overlooks the fact that there was bombardment, heavy fighting and mopping-up operations to rid the city of the armed infiltrators, and he has presented the whole situation as reprisals and killings by the government troops. To reach such a conclusion he must have taken as reliable the information supplied by the opposition groups and SPLA. What is more serious is the frequent reference, in the foreign media and in the respective reports of the Special Rapporteur, of extrajudicial killings of employees of foreign embassies and relief organizations. The employees referred to in this respect were Sudanese nationals who took advantage of the diplomatic immunity of the premises of these organizations, and the communications equipment available in these premises, to direct the artillery of SPLA, which was bombarding the city. The employees involved were justly sentenced by court martial and paid for their treachery. The reference by the Special Rapporteur to this sad event as an instance of extrajudicial killings is to ignore the fact that there is a constituted government authority in a city, which was then under siege by an enemy, and an act of treachery which led to hundreds of casualties and fatalities can be dealt with only by a court martial in accordance with the rules of international law pertaining to war, which are universally recognized. We are fully aware that the whole issue of human rights violations has been brought before the respective United Nations organs by a country whose embassy's premises have been used in this instance and which is trying to cover its embarrassment by pretending to be outraged about the execution of its local employees. The fact remains that the embassy premises in question were given diplomatic immunity by the Government of the Sudan at the request of the Government of the United States of America, yet the latter chose not to post a

diplomatic staff, but handed it to a local employee who happened to be in collusion with SPLA and consequently indulged in an act of war against the Government. We shall not comment or draw conclusions from that set-up and we leave it to the members of the Committee to draw their own.

On the other hand it is worth mentioning that the Government of the Sudan did, with regard to the Juba incidents, what it has been called upon to do by General Assembly resolution 47/142, that is to say set up an independent judicial investigation committee. But how do we expect that Committee to finish its job if it is still receiving long lists of allegations (230 names) by the Special Rapporteur as late as his recent visit to Sudan in September 1993 (see para. 36). The references in that paragraph to the effect that the Chairman of that Committee was unable to provide answers to certain questions are inaccurate because nowhere on earth would such a Committee release information about its findings before it finalizes its report.

8. The Government is protecting relief supplies

The journeys of the supply train carrying relief supplies to Wau from Babanusa, guarded by local PDF and army personnel, is portrayed in the report as a foray by these forces to kill, loot and destroy, but the Special Rapporteur does not explain why it is necessary for soldiers to walk on each side of the train, an arrangement which is necessary to safeguard the train and its shipment from the incursions of SPLA forces. The impression that one gets from the way the Special Rapporteur examines these issues is that the country is in a state of chaos, its armed forces are undisciplined and are given free licence to loot and destroy, the Government has no control of the situation and the rebel forces are in no way responsible for the prolongation of the war, or of the genocide committed, and is still being committed, in the fratricidal and brutal warfare being waged by the factions, especially against the civilian populations.

The facts of the case are that the Government was doing its best to comply with paragraph 8 of General Assembly resolution 47/142 and paragraph 12 of resolution 1993/60 of the Commission on Human Rights, which call upon all parties to permit delivery of humanitarian assistance to the civilian population in need. But instead of commending those efforts and blaming the rebels for blocking the delivery of food, the Special Rapporteur is saying that it would have been more appropriate for the Government to leave the civilian population to die of hunger rather than fight the rebels who block the food supplies. That is another clear indication of how the Special Rapporteur has lost sight of his mandate.

9. The mandate is to investigate and not to collect allegations

The report is actually a collection of allegations rather than an investigation of those allegations as called for by the mandate of the Special Rapporteur. That wrong methodology shows lack of experience. The following are just a few examples of those aspects of the report where the Special Rapporteur:

(a) Did not reflect what took place in his meetings with the 15 high-ranking officials of the Sudanese Government whom he met. Neither did he reveal what is the considerable documentary information he received from the Government of the Sudan, and what impact it has on his conclusions;

(b) In more than 23 paragraphs of his report he cited a considerable amount of hearsay material that has no evidential value. This is contrary to the expectation that he should have attempted to verify and corroborate the information before presenting it in his report. But it seems that the stockpiling of the allegations to distort the image of the Sudanese Government is more important than the verification which might wipe out those allegations and deprive the Special Rapporteur of a golden opportunity.

(c) Made various judgements without the benefit of evidence or substantiation of the judgements he has made. He was not impartial in giving opinions based on the allegations of the Sudanese opposition such as his reporting of the so-called illusory ghost houses, which is particularly a creation of the Sudanese self-exiled opposition. We find it unfair on the part of the Special Rapporteur to mention anything about ghost houses while failing to request a visit to the said ghost houses, when he was able to identify at least one such ghost house.

10. Lawful military operations

In paragraph 37 of his report, the Special Rapporteur made the following remark: "... many reports have been received concerning indiscriminate and deliberate aerial bombardments by government forces on civilian targets, e.g., camps for displaced persons ...". Here the Special Rapporteur is putting this statement out of context. Deliberate, yes, but they are not indiscriminate. The aerial bombardments took place, but against military targets where heavy weaponry is used by the rebels against the civilian population. For the record we would like to state that there are no displaced-persons camps in the SPLA-controlled areas. All displaced-persons camps are situated in the northern part of the Sudan for those fleeing the combat zones. We are troubled here to see the Special Rapporteur using the language of the so-called SPLA, which used to describe its military camps as displaced-persons camps as a camouflage and for propaganda purposes.

11. Unacceptable political remarks

In paragraph 64, the Special Rapporteur makes another suggestive remark: "... since geographically the Nuba Mountains area belongs to the North, opinions diverge concerning the political appurtenance of this area, if the conflict between the north and the south is considered ...". This is a political remark and it is ultra vires the mandate of the Special Rapporteur. Nowhere in the mandate has the Special Rapporteur been invited to make remarks about the political appurtenance of the Nuba Mountains or even the consideration of the conflict between the north and the south, which remains a domestic concern.

Also the Special Rapporteur made another unacceptable suggestion in paragraph 64 that: "... the precedents of recent conflicts started on a greater scale in 1983, when, as a consequence of former President Numeiri's new policy focusing on the implementation of Islamic Shariah Law, local tribal administration was abolished ...". Certainly the insurgence in the Nuba Mountains has nothing to do with either the Shariah laws or the abolition of local tribal administration. The Special Rapporteur had either betrayed his mandate by not allocating the required time to study the history of the region, or he is using the political logic propagated by the rebels (SPLA) in obvious connivance with the outlaws. The Special Rapporteur needs to clear himself regarding the statements he made on both instances.

12. Contradictory reporting

Paragraph 74 of the Special Rapporteur's report represents the climax of his contradictions. He made the following remark about the Katla tribe: "... the Chief of Katla tribe said that over the last four years, 67 children and women were killed by the rebels, and 2,000 tribal people are under camp-arrest in the Katla Mountains ...". Then, driven by his enthusiasm to implicate the Government of the Sudan, he immediately jumps to the conclusion that: "... it must be noted that according to several reliable independent sources the Katla tribe is especially targeted by the Government of Sudan forces because of being suspected of close collaboration with SPLA ...". In spite of the several reliable independent sources, he maintained, how could the Katla tribe be specifically targeted by government forces while the Chief of the Katla tribe tells the Special Rapporteur in the very paragraph 74 that it is the rebels who killed over the last four years 67 children and women and kept 2,000 tribal people under camp-arrest? Within the same context, we would also invite the distinguished delegates to consider the story narrated by the Special Rapporteur about the old man from Shibli in paragraph 75.

13. Incriminating approach

During his visit to the Angarko camp for displaced persons, the Special Rapporteur explained in paragraph 78 that he did not receive convincing explanations regarding the difference in the number of displaced persons in the said camp between the figures of the United Nations Children's Fund (3,270) and those of the Government of the Sudan. That is not an intelligent query to be raised because the displaced-persons camps in the Sudan are not prisons, they are simply a humble humanitarian residence area prepared by the Government for its citizens who are seeking refuge. The displaced persons are free to go out of these camps voluntarily whenever they so decide. Considerable numbers of the displaced persons have settled in different cities where they can work and earn a living as called for in his report. This paragraph, in our view, reveals the incriminating approach of the Special Rapporteur who apparently departed from his original mandate, failing to establish a pattern of human rights violations. So instead of commending the Government for guaranteeing freedom of movement, he availed himself of the incident to raise doubts in the absence of any allegations to justify such doubts.

14. The testimony of 34 tribal chiefs disregarded

In paragraph 82 it is disturbing to note that the Special Rapporteur describes the testimonies given to him by 34 tribal chiefs as allegations. He made the following remark: "... the chiefs of tribes said that SPLA was responsible for all atrocities committed and damages caused in the Kadugli area in recent years. According to their allegations atrocities started here in August 1987 ...". The use of the word allegations in the above context should be compared to and read with the Rapporteur's use of the same word in connection with the rebels in paragraph 84: "... allegations concerning a wide range of gross violations of human rights and atrocities committed by SPLA were formulated ...".

In fact, had it not been for the bias and lack of experience and professionalism on the part of the Special Rapporteur, he would have realized that the testimony of that large number of reliable eyewitnesses is very strong evidence in favour of the Government and could have been rebutted only by equally strong evidence and he would not be volunteering to refer to it as allegations.

15. Other foreign dignitaries reporting fairly about the Sudan

The Special Rapporteur has ignored the fact that the Sudan has received during 1993 all the officials sent by the United Nations to investigate allegations of human rights violations and relief aid to the needy, such as Mr. Vieri Traxler, the Secretary-General's representative, the delegation of the European Community's Troika, and some Western European leaders such as the Chairman of the Subcommittee on Human Rights of the Bundestag, the Netherlands Minister of Development and International Cooperation, and some United Kingdom members of the two Houses of Parliament. The Sudan also, and within one week of notification, accepted Mr. Biro's appointment as Special Rapporteur and cooperated fully with him to fulfil his mission.

For the sake of comparison and to prove that the reporting of the Special Rapporteur about the Sudan is really biased and politically motivated, we would refer to the reporting of some of those foreign dignitaries who visited the Sudan during the same year 1993:

(a) Mr. Jan Pronk, the Minister of Development and International Cooperation of the Netherlands visited the Sudan from 23 to 27 October 1993 and his visit covered the displaced-persons camps and the area of the Nuba Mountains. The remarks of Mr. Pronk were published in the newspaper Algemeen Dagblad. For the sake of comparison, we refer to paragraphs 55 to 61 where the Special Rapporteur has reported that several persons who had tried to contact the United Nations office during his visit or who actually met with him have been questioned and arrested by police and security forces. Mr. Pronk is reporting a totally different story: "a United Nations Rapporteur preceded us here some time ago. We had all the names of the persons he spoke to. In many countries courage is necessary to speak to such a Rapporteur. Afterwards the security service usually comes along ... but today we came across a number of persons he spoke to. That is a good sign." So we have two contradictory

reports, the Special Rapporteur is saying that any person who dared to speak with him is subjected to reprisal by police and security forces while the Netherlands Minister is reporting that he himself has met a number of persons who have spoken with United Nations Rapporteurs before and not one of them mentioned anything about reprisals and that is a good sign. So it is crystal clear that one of the two gentlemen is not reporting fairly, to say the least;

(b) According to paragraph 4 of Commission on Human Rights resolution 1993/60, the Special Rapporteur is supposed to be reporting about the progress made in the Sudan towards the full restoration of human rights and compliance with international human rights instruments and international humanitarian law. But nowhere in the report has the Special Rapporteur mentioned any such progress. On the other hand, Minister Pronk has reported progress and improvements: "the situation in the Nuba Mountains has improved ... we rode southwards by car to Kadugli ... on the way we visited villages and refugee camps ... there is no hunger ... since the beginning of this year [the situation of human rights] has improved ... the new Governor is sincere ... there are improvements to speak about ... the relief to refugees is good, better than in Khartoum ... we came across professional Sudanese aid organizations, Islamic and Christian, with dedicated support. The mortality was better than I expected. There is water and the supply of foodstuff and medicines by the international aid organizations is good ..." So, according to the reporting of the Netherlands Minister, there are improvements in the field of human rights and humanitarian assistance but what can the Government of the Sudan do if the Special Rapporteur is not willing to report those improvements and the progress made despite the fact that the resolution is calling upon the Special Rapporteur to make such reporting.

Furthermore we avail ourselves of this opportunity to report that the Head of State of the Sudan has recently, after the Special Rapporteur left the Sudan, promulgated constitutional decree No. 7 enshrining respect for human rights in the constitutional set-up of the country.

Not only that but the Revolutionary Command Council has dissolved itself and appointed a President of the Republic who would later be democratically elected. All that improvement was elaborated in constitutional decrees Nos. 8 and 9, promulgated with constitutional decree No. 7. That was a strong and irreversible move towards democracy;

(c) When the Special Rapporteur refers to SPLA leaders in his report, he equates them with senior government officials despite the fact that they are outlaws and bandits and are continuing the fighting for personal and ethnic motives. He went even to the extent of failing to report about their atrocities at this stage. But the Netherlands Minister is balanced in his reporting: "... I had a meeting with former southern leaders who remain in the town (Khartoum) ... including old Vice-President Abel Aler, whom I have known for 20 years now. There is wisdom among them not the personal and ethnic motives which so dominated the discussions that I had a few months ago with SPLA leaders in the south ...";

(d) Among the foreign dignitaries who visited the Sudan recently (4-8 May 1993) is Mr. Frederik Vogel, the Chairman of the Subcommittee of the

Bundestag. He reported that the Government of the Sudan has been flexible and responsive to Commission of Human Rights resolution 1993/60 and that the Government of the Sudan has justification in criticizing Mr. Gaspar Biro when he went to the Sudan last year as an independent expert. In our view, that criticism applies also this time and is twofold. Firstly, Mr. Biro is relying in his reporting on the allegations received by him instead of verifying those allegations and searching the facts of each case. Secondly, the Sudan is a vast country and the means of communications are not sophisticated, so if the Government is not able to provide him with information regarding any persons within a short time that should not mean that the allegations are true or that the Government is not willing to provide the necessary information. We notice for example that, in his interim report, he referred to the fact that he had submitted a list of names to the Minister of Justice but has not received any reply during his stay. The remark is true but he did not bother to seek clarifications for the delay. The fact of the case is that the Minister of Justice and all other concerned authorities have been exerting their full efforts to collect the information from remote parts of the country, but were not able to prepare the response before he left Khartoum. Now the response is ready after all the necessary information has been collected and will be handed over to him at any time. The response proves beyond any reasonable doubt that the allegations are unfounded. That in itself explains why Mr. Vogel is justified in reporting that the criticism of the Government about Mr. Biro is justified. Actually, if there are serious violations of human rights in the Sudan, the Special Rapporteur would not have bothered to report a five-hour arrest as he did in paragraph 56. Not only that but, even when the Government reports the release of some persons, still the Special Rapporteur would say that is not enough and he is still waiting confirmation as he did in paragraph 57.

In fact, whenever it is possible for the Government of the Sudan to take immediate measures to alleviate any injustices, even if they are justified, it would not hesitate to do so immediately as it did with regard to the situation of the women's prison in Omduraman, the only move welcomed by the Special Rapporteur as reported in paragraph 50. But no doubt such action is not possible in all cases, especially when the action called for is information about hundreds of names;

(e) Mr. Vogel also reported that he has asked for visits to certain places and the Government has complied immediately with his request and there was no time for the authorities to prepare for such visits and after he made those visits there was no evidence of the ghost houses referred to in some allegations. As for the Special Rapporteur, he did not mention the sudden visits which he has asked for as did Mr. Vogel. Not only that, but he did not even report the positive aspects he discovered during those visits. That shows the Special Rapporteur is looking for evidence to prove the allegations he brought with him and if he does not find such evidence he would not trouble himself with reporting the rebuttal;

(f) With regard to the armed conflict in the Sudan, Mr. Vogel, unlike the Special Rapporteur, reported that it is naive to depict such war as a war between Muslims and Christians, or a war between Arabs and Africans. But when we read through the report of the Special Rapporteur one would definitely reach

the conclusion that it is a war between Muslims and Christians and between Arabs and Africans;

(g) Another foreign dignitary who visited the Sudan recently (31 January-6 February 1993) is Mr. Bernd Kant, the Chairman of Missio Organization, who was quoted in the report of Mr. Vogel as reporting that he cannot say that Christians are not tolerated in the Sudan.

16. Street children taken care of

In section 4, entitled, "Arbitrary arrest and detention, and due process of law", the Special Rapporteur raised in paragraph 52 a number of questions that remain in his opinion unanswered. The Special Rapporteur should have raised these questions during the visit in his meetings with the Sudanese officials, but not in his report and in a suggestive way. The Government of the Sudan's Ministry of Social Planning treats the issue of street children with seriousness and with the priority it deserves. Well prepared social plans are prepared and implemented to grant them food, shelter, medical care, education and vocational training and apprenticeship as mandated by the presidential decree establishing that Ministry. However, the Special Rapporteur is trying to cast doubts about the reformatory process adopted by the Government of the Sudan, and as usual he quotes allegations and testimonies without indicating their source or considering their evidential value. The suggestions thus made by the Special Rapporteur in relation to street children are totally misleading.

Further in section 5, entitled "Reprisals", the Special Rapporteur raised in paragraphs 57, 58 and 59 a number of incidents which deserve our attention. The persons and women said to have been arrested in front of the United Nations office in Khartoum were treated under the applicable Sudanese law prohibiting unlawful assembly. Those persons did not obtain the required permission to assemble and as such the security forces interfered with their demonstration and they were released immediately thereafter. It was also the responsibility of the Government of the Sudan to protect the Special Rapporteur and the United Nations office in Khartoum from any violence. The fact that the demonstration was not authorized and unlawful renders it unpeaceful, contrary to the conclusions of the Special Rapporteur. Furthermore if the Government of the Sudan had bad intentions against those people it would not have acted in front of the Special Rapporteur.